

SAN FRANCISCO PUBLIC LIBRARY



3 1223 06835 4852



*Closed  
Stacks*

*San Francisco Public Library*

GOVERNMENT INFORMATION CENTER  
SAN FRANCISCO PUBLIC LIBRARY  
100 LARKIN STREET  
SAN FRANCISCO, CA 94102

REFERENCE BOOK

*Not to be taken from the Library*







HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 9, 2008  
1:38 P.M.

DOCUMENTS DEPT.

APR 21 2008

SAN FRANCISCO  
PUBLIC LIBRARY



1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

3  
4  
5  
6 HEARING

7  
8  
9  
10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

13  
14  
15 WEDNESDAY, JANUARY 9, 2008

16 1:38 P.M.

17  
18  
19  
20  
21  
22  
23  
24 Reported by:

25  
26 Evelyn J. Mizak  
27 Shorthand Reporter  
28



APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

ARTHUR GUY BAGGETT, JR., Member  
State Water Resources Control Board

FRANCES SPIVY WEBER, Member  
State Water Resources Control Board

SENATOR JACK SCOTT

SUPERINTENDENT JACK O'CONNELL  
State Superintendent of Public Instruction

JACK LONG  
Secretary of Education

THEODORE R. MITCHELL, Ph.D., Member  
State Board of Education

JOHNATHAN X. WILLIAMS, Member  
State Board of Education





1 SHERRY SKELLY GRIFFITH

2 Association of California School Administrators

3 CAPRICE YOUNG, CEO/President

4 California Charter Schools Association



## INDEX

	<u>Page</u>
Proceedings .....	1
<u>Governor's Appointees:</u>	
ARTHUR GUY BAGGETT, JR., Member	
State Water Resources Control Board .....	1
FRANCES SPIVY WEBER, Member	
State Water Resources Control Board .....	1
Motion to Vote Separately .....	1
Statements by CHAIRMAN PERATA re:	
Support of Confirmation .....	1
Dysfunctional System .....	1
Web Site Shows Decrease in	
Enforcement Actions .....	2
Lack of Quorum at Regional Board Level .....	2
Need for More Aggressiveness .....	2
Response by MS. WEBER .....	3
Response by MR. BAGGETT .....	3
Motion to Confirm MR. BAGGETT .....	4
Committee Action .....	4
Motion to Confirm MS. WEBER .....	4
Committee Action .....	5
THEODORE R. MITCHELL, Ph.D., Member	
State Board of Education .....	5
JOHNATHAN X. WILLIAMS, Member	
State Board of Education .....	5
Introduction and Support of MR. MITCHELL by	
SENATOR JACK SCOTT .....	5





1	Introduction and Support of MR. MITCHELL by	
2	SUPERINTENDENT JACK O'CONNELL .....	6

3	Introduction and Support of MR. MITCHELL by	
4	SECRETARY DAVE LONG .....	9

Statements by CHAIRMAN PERATA re:

6	Importance of Position .....	11
7	Education's Wrong Turn after Prop. 13 .....	11
8	Difficult Year Financially for	
9	Education .....	12
10	Problems with No Child Left Behind .....	13
11	98 Schools that Are Red Lining .....	13

Questions by CHAIRMAN PERATA re:

13	Board's Relationship to the Red-lined	
14	Schools and Governor's Plans .....	13
15	Significant Number of Red-lined Districts .....	16
16	Major Challenge of Diversity .....	17
17	State Administrator or Trusteeship for	
18	Troubled Districts .....	17
19	Options Available under Law .....	18
20	Actions Taken by State to Try to Help	
21	Districts Avoid Trouble .....	19
22	Capitalizing the System .....	21
23	Strategy to Address Achievement Gap .....	22
24	Examples of Differences between Charter	
25	and Noncharter Schools .....	22
26	Need for More Local Flexibility .....	25
27	Teaching to the Test .....	26



Questions by SENATOR PADILLA re:

Impact on State of No Child Left Behind.....	27
English Language Learner Population.....	28
Board's Tracking System.....	32
Concern that Boards Is Charter Schools Oriented.....	33
Structure in Place for Charter School Assessment.....	34
Too Many Charters.....	36

Questions by SENATOR DUTTON re:

Career Tech and Federal Dollars.....	37
Need for Better Handle on Dropout Rate.....	38
Ideas to Encourage Students to Finish School.....	39

Statements by SENATOR ASHBURN re:

Association with Chair's Comments.....	41
Urge Board to Look at More Technologically Advanced Instructional Materials.....	42

Questions by SENATOR CEDILLO re:

Associate with Comments about English Language Learners.....	42
Impact of State Budget on K-12.....	43
Motion to Confirm Both Nominees.....	44

Witnesses in Support:

SUPERINTENDENT O'CONNELL.....	44
SHERRY SKELLY GRIFFITH Association of California School Administrators.....	45



1	CAPRICE YOUNG, CEO/President	
2	California Charter Schools Association.....	46
3	Statements by CHAIRMAN PERATA re:	
4	Need for Board, Legislature and Governor to	
5	Act as Partners.....	47
6	Committee Action.....	48
7	Termination of Proceedings.....	48
8	Certificate of Reporter.....	49
9	APPENDIX: Written Responses to Committee Questions	
10	By Appointees, as well as Written	
11	Responses by Appointee Not Required to	
12	Appear: KENNETH J. WILLIAMS, Member,	
13	State Board of Barbering and Cosmetology.....	50
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		





--ooOoo--

CHAIRMAN PERATA: I'd like to welcome everyone to the first Senate Rules Committee of the new year.

We have two appointees here that are on for vote only, but that does not preclude, unfortunately, people asking you questions. So, if Art and Frances would come forward.

We already had a nice chat last year, so we'll try not to be repetitious of that time.

SENATOR ASHBURN: I would simply ask that we take these as separate appointments.

CHAIRMAN PERATA: Normally what that means is --  
[Laughter.]

MS. WEBER: You're going to ask me some hard questions, I know.

CHAIRMAN PERATA: I wanted first of all to say without hesitation that I am going to support both of you for confirmation.

But I do want to emphasize very strongly that I believe that you are presiding over a dysfunctional system not of your cause. I carried legislation, which I'm going to do again this year, which I believe the administration might be more kindly to review, that would try to make the Board much more consistent with the needs and the challenges that we face. I think you need some things to help you be able to do this.

One of the things I was discouraged at, and I just want to mention is, off your web site, it appears that the number of enforcement actions have declined. And that's

1     troublesome even if it weren't because of the recent oil spill.  
2     We'd be mindful of this, but I'm particularly concerned about  
3     that and what is necessary to get you up to strength.

4                 I am very concerned generally about the regional  
5     boards that often times fail to have a quorum because members  
6     are not showing up. That's why we wanted to streamline the  
7     position.

8                 But the emphasis of this administration,  
9     rightfully, has been on the environment. We hear more about air  
10    quality, but certainly as we've been talking recently about what  
11    we're doing with the future of water in California, those become  
12    very big issues.

13                So, it's an important position. I would like to  
14    see your profile higher. I'd like to see you operating more  
15    aggressively.

16                And I would like you, in the position that you're  
17    sharing, to be able to say that these things aren't working,  
18    they need to be fixed, because we can never know here, and you  
19    probably don't want to allow us to infer what we think is wrong  
20    and then try to fix it. It hasn't worked out so well for us in  
21    the past.

22                So, you should be able to tell us as matter of  
23    policy: This is what I think you should be looking at, which is  
24    not working well; we need to follow it in order to meet our  
25    mission. If there's ever going to be any place to be aggressive  
26    in the State of California, I think it can be with regard to the  
27    environment, and particularly with water.

28                So, you'll be hearing a lot about water this

1 year. Hopefully, something might even happen.

2 But I'm confident that we're in good hands, and I  
3 want to thank you for your work. Don't be strangers. If you've  
4 got ideas, then certainly, speaking for myself anyway, I won't  
5 be a stranger.

6 MR. BAGGETT: Very good.

7 MS. WEBER: Thank you. You will be hearing from  
8 us, too, because I agree with you. We need to be working more  
9 closely with you. There are some things that have happened, and  
10 just recently, having to do with enforcement and setting up an  
11 office of enforcement, but I'll get information to you on that.

12 There's hope, real hope, that with some help we  
13 can make a dent in what's going on.

14 CHAIRMAN PERATA: Great.

15 MR. BAGGETT: And I think we've also just  
16 subsequent of last August, we've had three more attorneys.  
17 We'll have seven attorneys in our enforcement unit, which our of  
18 a total package of 41 total attorneys, that's pretty  
19 substantial. So, I think the message is loud and clear.

20 CHAIRMAN PERATA: It's hard for me to get over my  
21 natural instinct when you say we've hired more attorneys.

22 [Laughter.]

23 MR. BAGGETT: We didn't hire; we transferred.

24 MS. WEBER: We shifted.

25 MR. BAGGETT: We shifted them. We transferred  
26 them over to enforcement.

27 [Laughter.]

28 CHAIRMAN PERATA: I don't care how you came about

1 it.

2 MR. BAGGETT: You can never have too many  
3 lawyers.

4 CHAIRMAN PERATA: That's right.

5 MS. WEBER: You can shift some of your folks over  
6 to us, too, if you wish.

7 CHAIRMAN PERATA: Any other questions?

8 We have a motion to split, and so we shall. The  
9 first one would be for Mr. Baggett, motion to approve.

10 SECRETARY WEBB: Cedillo.

11 SENATOR CEDILLO: Aye.

12 SECRETARY WEBB: Cedillo Aye. Dutton.

13 SENATOR DUTTON: Not voting.

14 SECRETARY WEBB: Padilla.

15 SENATOR PADILLA: Aye.

16 SECRETARY WEBB: Padilla Aye. Ashburn.

17 SENATOR ASHBURN: No.

18 SECRETARY WEBB: Ashburn No. Perata.

19 CHAIRMAN PERATA: Aye.

20 SECRETARY WEBB: Perata Aye. Three to one.

21 CHAIRMAN PERATA: Three to one, you're out.

22 Now for Frances Weber.

23 SECRETARY WEBB: Cedillo.

24 SENATOR CEDILLO: Aye.

25 SECRETARY WEBB: Cedillo Aye. Dutton.

26 SENATOR DUTTON: Aye.

27 SECRETARY WEBB: Dutton Aye. Padilla.

28 SENATOR PADILLA: Aye.



1 SECRETARY WEBB: Padilla Aye. Ashburn.

2 SENATOR ASHBURN: Aye.

3 SECRETARY WEBB: Ashburn Aye. Perata.

4 CHAIRMAN PERATA: Aye.

5 SECRETARY WEBB: Perata Aye. Five to zero.

6 CHAIRMAN PERATA: You're out as well.

7 Congratulations to both of you. You're welcome  
8 to stay now for the rest of this.

9 [Laughter.]

10 MS. WEBER: Thank you. Don't be offended.

11 [Laughter.]

12 CHAIRMAN PERATA: I never am.

13 Now we have the Governor's appointees for the  
14 State Board of Education, Ted Mitchell -- it says Theodore here.  
15 It's not Theodore; it's Ted. Ted's here -- and Johnathan  
16 Williams.

17 Why don't you come up and make your presentation.  
18 We'll take you in tandem.

19 You're here, Jack, I would guess to --

20 SENATOR SCOTT: To say a word about a good friend  
21 of mine and somebody that I think is excellently qualified to be  
22 on the State Board of Education.

23 In fact, he's already won the respect of his  
24 colleagues to such a degree that this morning he was elected  
25 President of the State Board of Education.

26 Ted Mitchell is a former constituent of mine. He  
27 was President of Occidental College, which was in my district,  
28 and did a superb job there. Prior to that, I knew him as the

1 Graduate Dean of the School of Education at UCLA. And now he is  
2 President and CEO of NewSchools Ventures Fund.

3 That's an impressive resume, but on a personal  
4 basis, I've had quite a number of conversations with Ted  
5 Mitchell about education. I have found him to be extremely well  
6 informed. In fact, I asked him and three others to help me with  
7 a bill that I have that is a two-year bill, it's in the Assembly  
8 now, on higher education accountability. And of course his  
9 insight and advice on that, along with three others, was  
10 extremely helpful. He also Chaired the Advisory Commission of  
11 Governor Schwarzenegger. One of our colleagues, Senator Dede  
12 Alpert, served with him on that.

13 He's just a person who has unusual skills and  
14 abilities in the field of education, but he has a personality  
15 that makes him a uniter and the kind of person that can work so  
16 well with other people.

17 So, when he asked me if I would introduce him, I  
18 was honored to do that, and I therefore recommend him without  
19 hesitation.

20 CHAIRMAN PERATA: Thank you, Jack. We appreciate  
21 that.

22 Would the other Jack like to come forward?

23 SUPERINTENDENT O'CONNELL: Thank you, Mr.  
24 Chairman.

25 And Senator Scott really gave my pitch. In fact,  
26 I'm here in total complete support for Ted. In fact, he was  
27 elected President, as Jack said, just a couple of hours ago. I  
28 had the honor of presiding over that entire event.

1 I first met Ted eight years ago, when I was first  
2 thinking of running for this position. I remember talking with  
3 you about it, Mr. Chairman. And Ted's one of the people that  
4 people told me, you need to talk to the President of Occidental  
5 College.

6 Well respected, understands the issues, a grasp  
7 on governance, on funding, really knows and has been intimately  
8 involved in public education.

9 I remember our first meeting as if it were  
10 yesterday. I think we were scheduled for a half hour. It went  
11 almost three hours, and we really became friends ever since.

12 He really does, as Senator Scott said, have a  
13 passion for education. His entire life has really been designed  
14 to improve public education. It's evidenced by his own personal  
15 experience, attending Stanford, graduating with a bachelor's  
16 degree in history, a master's degree in history as well from  
17 Stanford, and then his Ph.D. from Stanford in the History of  
18 American Education.

19 And I can just give you one recent commitment to  
20 his real fondness for public education and his commitment to the  
21 job, I know where he lives. Remember the fires that we had here  
22 in the fall, and his neighborhood was basically on fire in  
23 October. And we were scheduled to be on a panel in the Bay  
24 Area. And Ted was five minutes late, took a later plane so he  
25 could stay there and protect his house, and he left five minutes  
26 early from this two-hour panel. But he'd made a commitment to  
27 come up and attend, and meet with students, meet with business  
28 leaders, meet with educators. And that's just the kind of

1 person that he really is.

2 As Senator Scott said, he serves as the CEO of  
3 the NewSchools Venture Fund, which is a Venture philanthropic  
4 firm that is focused on transforming public education for  
5 underserved children. I've had a chance to attend several  
6 forums and events that he has sponsored in this capacity. And  
7 I've been very impressed how he brings in divergent points of  
8 view. It's not all charter school people; it's not all  
9 non-charter school people. It's really K-12 as well as higher  
10 education, business community well represented, and understands  
11 the diversity of our school children.

12 He's worked at some of the most prestigious  
13 academic institutions, not just in our state but in our country,  
14 obviously as President at Occidental. A graduate of Stanford in  
15 his own right, he was a deputy to the President of Stanford and  
16 was on the Stanford Board of Trustees for six years, from '85 to  
17 '91. And he was also, as Senator Scott said, the Dean of the  
18 School of Education at UCLA.

19 Currently, he does Chair the Governor's Committee  
20 on Excellence. The report is not yet public, but if you want to  
21 see it, it's on line at San Jose Mercury Newspaper, to give you  
22 a little hint.

23 [Laughter.]

24 SUPERINTENDENT O'CONNELL: I'm not sure how that  
25 happened, but it's very thoughtful. And I don't agree with  
26 every concept in there; I said that this morning. But I  
27 understand why the recommendations have been made, and I'm with  
28 him probably 90 percent.



1                   So, I'm here in strong support of the President  
2 of the State Board of Education, and strongly recommend your  
3 support as well.

4                   CHAIRMAN PERATA: Thank you, Superintendent. We  
5 appreciate as usual having you here.

6                   SUPERINTENDENT O'CONNELL: Thank you, Senator.  
7 It's nice to be back.

8                   CHAIRMAN PERATA: We're going to take  
9 Johnathan -- is there somebody else? Yes, sir.

10                  MR. LONG: I'm Dave Long, the Secretary of  
11 Education.

12                  CHAIRMAN PERATA: Don't be timid. Sit down.

13                  MR. LONG: Thank you very much.

14                  CHAIRMAN PERATA: You can explain how we don't  
15 have something that the Merc does.

16                                 [Laughter.]

17                  MR. LONG: I'll make that a part of it.

18                  I deeply appreciate being here to take just a  
19 minute or two to talk about the gentleman on my right, and I  
20 mean that sincerely.

21                  We have some heavy lifting to do in the field of  
22 education over the next year and the years to come. And I can't  
23 think of a better gentleman to be involved in the forefront of  
24 that heavy lifting. We need the type of leadership that Ted  
25 Mitchell exemplifies and typifies.

26                  He has -- and I just jotted a few things down  
27 because as I thought about Ted Mitchell, and I want to be right  
28 up front with you, first of all, we met about a year or a

1 year-and-a-half ago. And I can't remember when I've latched  
2 onto another human being like this. So, we have become very  
3 close personal friends in the last twelve to eighteen months, so  
4 I want to tell you that from the outset.

5 Ted Mitchell from the standpoint of leadership  
6 has a depth of the expertise that we don't see very often. And  
7 coupled with that depth of expertise is a depth of understanding  
8 of the issues. And that comes from many years in the field, but  
9 it's also -- there's some other things that are sprinkled on top  
10 of it that I think makes him very special. And I would sprinkle  
11 some things called a very respected calmness, so that when even  
12 tough situations and issues come before him, that calmness comes  
13 through over and over.

14 Then you sprinkle something else on top of it  
15 called common sense, and Ted Mitchell has this by the pound. He  
16 is highly respected; he is deeply trusted, and he is a  
17 collaborator. I don't know -- I was trying to think as I was  
18 sitting here how many times someone like Senator Scott comes in,  
19 the State Superintendent, and the Secretary of Education to  
20 speak on behalf of one man and one leader.

21 As I said earlier, we are friends, very close  
22 friends. And in closing I will say this. Ted Mitchell is a  
23 very, very special leader. He is a very special human being. I  
24 recommend him highly.

25 CHAIRMAN PERATA: Thank you very much Secretary.

26 Anyone else?

27 Now Johnathan. I'd like to welcome both of you.

28 Mr. Williams, this is a reappointment for you and

1 for Mr. Mitchell.

2 Our congratulations. Were you in the room when  
3 they voted?

4 MR. MITCHELL: I went to the restroom and it  
5 happened.

6 [Laughter.]

7 CHAIRMAN PERATA: I've known Jack for a long  
8 time. You've got to watch out for that, for being Chair of the  
9 Board.

10 I do also want to offer our condolences. I  
11 understand that your mother passed away this week.

12 MR. MITCHELL: Thank you.

13 CHAIRMAN PERATA: So, our condolences to you and  
14 your family.

15 There are a lot of appointments that come before  
16 the Rules Committee that are of passing interest to me, but this  
17 isn't one of them. When it comes to education, both by training  
18 and by the fact that not only do I have my own children, I now  
19 have grandchildren, that this is not a speculative pursuit.  
20 This is live action, and we're using real bullets.

21 I believe that education took the wrong turn  
22 coincident with the passage of Prop. 13, and I'm not here to  
23 fight that fight. But one of the things that happened,  
24 undeniably, is that it shifted a lot of the authority for  
25 education to Sacramento. And that's really a damn shame,  
26 because you spend a little time here, and you always think, you  
27 know, that it's like sports, sex, and education; everybody's an  
28 expert because they've either participated either by themselves



1 or with others. And as a consequence of that, we all think that  
2 there are things that we can do better, and so we'll pass a  
3 law. And the Ed Code looks like it. It is a mess.

4 If you have a little extra time in your schedule,  
5 maybe what you'd like to do is rewrite the damn thing.

6 It's always amazing to me that the U.S.  
7 Constitution could be so short, and our Ed Code is so long.

8 But there's no doubt that we're on very difficult  
9 times as a state financially. The Governor hinted at that last  
10 night.

11 I was disturbed, however, specifically when we  
12 were citing that we have so many problems in education but, this  
13 won't be the year to solve them. Every kid gets a year older;  
14 every parent knows that, so what we're going to do on the Master  
15 Plan or the forecast for the next ten years is of little  
16 interest to people who're sending a child to first grade, or on  
17 to junior high, or high school.

18 And the litany of difficulties in this state are  
19 legion. I don't think anybody's been more out front, and  
20 there's been any better advocate for this than Jack O'Connell.  
21 And if he could fix it -- I know the Governor wants to fix it by  
22 taking the Board away from him -- nothing personal, Jack; he  
23 thought you needed some more free time.

24 What occurs to me is that it's really going to  
25 be, if nothing else, what your Board can do is to provide some  
26 scrutiny at least over some of the situations that were touched  
27 on last night lightly by the Governor that we hear a lot in the  
28 constituencies that we represent. You know, the dropout rate is

1 intolerable. We're having problems with Special Ed, and the  
2 list goes on and on.

3 But if you look at sort of the headline issues,  
4 there's No Child Left Behind. I must say that as a former  
5 classroom teacher, I tend to draw to me other people who are  
6 teaching now. There are a lot of unhappy teachers in the state  
7 right now, a lot of teachers who do not feel that their best and  
8 highest use is being met with the formulaic way that they're  
9 being asked to teach. That's very, very important to heed  
10 because the Governor once again said, we need 100,000 new  
11 teachers. It is not an inviting profession for many today.

12 And I know that I'm sitting in front of someone  
13 who has gone the charter school route, and somewhere in that  
14 you'll always hear that there is more flexibility; there's more  
15 self-determination in a charter school than there is in a  
16 regular school.

17 So, as we look at No Child Left Behind, and we  
18 look at some of the prescriptiveness that we've placed upon  
19 classroom teachers, we get to one fact: You have set the  
20 standard very high for the children of this state. You  
21 established that CSU admission would be synonymous with the  
22 standard that we want for graduates to meet.

23 We have now, I think Governor said last night, 98  
24 schools that are red lining. Obviously, these schools  
25 presently are not able to meet it.

26 What is the Board's relationship in your mind to  
27 these 98 schools and to what the Governor plans and intends to  
28 do, which I guess will become a little bit more clear tomorrow?

1 MR. MITCHELL: I'll start.

2 Thank you very much, Mr. Chairman and Vice  
3 Chairman, for your courtesy in allowing Johnathan and I to be  
4 here. I want to thank you for that opportunity for the  
5 condolences that you offered to me and my family.

6 I'd also like to thank members of the Board of  
7 Education who are here to make sure that Johnathan and I answer  
8 correctly.

9 CHAIRMAN PERATA: Why don't you acknowledge them.

10 MR. MITCHELL: Member Yvonne Chan.

11 CHAIRMAN PERATA: Nice to see you.

12 MR. MITCHELL: Ted Noonan, Ruth Bloom, David  
13 Lopez, Monica Liu, oh, and Ruth Green. So, we have a quorum --

14 [Laughter.]

15 MR. MITCHELL: -- and I'd now like to introduce  
16 agenda item -- where did we leave off -- thirteen. And I think  
17 that the Ed Code and the State Board agendas are approximately  
18 the same size, and we'll get to that in a moment.

19 So, thank very much.

20 I think to be kind of clear at the outset about  
21 those 98 districts that are in program improvement status, the  
22 State Board of Education has the responsibility under No Child  
23 Left Behind to make determinations about remediation for those  
24 98 districts. So, the ball is in our lap.

25 And as I think you know, we have taken sometime  
26 over the last eight weeks to better understand from a data point  
27 of view what's going on in those districts and to attempt to  
28 pull together not just a governor's recommendation, but a

1 recommendation that will have the support of the Secretary of  
2 Education and the Superintendent of Public Instruction that will  
3 come to the Board as a single unified item. So, much of the  
4 work that has taken place since the identification of the 98  
5 districts until today has been about crafting that kind of plan  
6 that, again, won't be simply the Governor's plan, but will be a  
7 collaborative plan.

8 I think that that process started with an  
9 important premise that, Senator, goes to one of your earlier  
10 comments and to one of the beliefs that I believe that the Board  
11 shares as a whole, and I certainly adhere to, and that is that  
12 California is a very diverse state. That's true  
13 demographically; it's true geologically; it's true every way in  
14 between.

15 And so, it is -- having set very high and common  
16 standards for the state, it's important for the Board to  
17 represent the diversity of approaches to reach those high and  
18 common standards. And that belief needs to be represented, I  
19 believe, and I believe my colleagues do as well, in our approach  
20 to these 98 school districts. No one-size-fits-all remedy can  
21 solve a problem that is not a one-size problem. These districts  
22 each have their own unique circumstances and their own unique  
23 challenges. And we as a Board need to be sensitive to  
24 uniqueness.

25 So, I look forward on Friday to our first  
26 opportunity to hear directly from many of those affected  
27 districts, and then to work with the Board staff, and CDE, and  
28 the Secretary's Office to create a common template -- a common



1     template within which we can differentiate our remedies for  
2     these districts and hopefully see them improve in the real time  
3     in which students live their lives, because the clock is ticking  
4     for them. So, we need to make sure that the remedies that we  
5     create are in place and working for those kids now.

6                     CHAIRMAN PERATA: Thank you.

7                     Johnathan?

8                     MR. WILLIAMS: Absolutely. I'd agree with Ted  
9     along those very same lines. One size does not fit all.

10                    And would agree with you in terms of Sacramento  
11    being able to manage all of the thousands school districts.  
12    Certainly that's a capacity issue and one that we do take  
13    seriously.

14                    So, the first thing that we did was to reach out  
15    to the districts and have the districts share some plans with us  
16    around: What corrective actions do you believe would best  
17    enable you to turn the district around? And then work with them  
18    to review those plans and hold them accountable to student  
19    academic achievement.

20                    But it is a back-and-forth. It is in a very  
21    deliberative and thoughtful process, and we look forward to  
22    Friday, look forward to reviewing those plans.

23                    CHAIRMAN PERATA: I notice that the list,  
24    unhappily, those of us sitting on this dais have lots of schools  
25    represented. There's a significant number in Kern, Los Angeles,  
26    in my district, in the Inland Empire.

27                    This is something that's interesting because a  
28    lot of times, people think it's an urban California problem

1 affecting Oakland and L.A., and here we have schools in the  
2 Valley; we have schools in the Inland Empire, which is the  
3 fastest growing part of the state.

4 So, you're right. The diversity, we tend at  
5 least in Oakland, we always worship at the altar of diversity.  
6 We pride ourselves on being the most diverse city in America,  
7 but oftentimes we don't establish our service system to reflect  
8 that.

9 So, I think it's going to be a major challenge.  
10 You can have a very broad template, but I'm sure it's going to  
11 be difficult in the application.

12 One of the things that unhappily I've been  
13 associated with for years is the State Administrator. Oakland  
14 has been under one how long, Jack? Four years now. And we've  
15 been blessed with a couple of good administrators there, but the  
16 fact is that if you had to put 98 administrators into these  
17 districts, you couldn't do it.

18 So, do you have any kind of a hint or  
19 predisposition on how that might happen? I mean, Jack couldn't  
20 find that many administrators. He just couldn't. It's too damn  
21 hard.

22 So, do you have any predisposition about who'd be  
23 in charge? How they'd be in charge? I guess they would be,  
24 unlike in Oakland where we have both a fiscal and academic, this  
25 would be more of a performance-oriented trusteeship?

26 MR. MITCHELL: Certainly trusteeship is one of  
27 the options that's available under No Child Left Behind. And I  
28 know that there's no definite plan to assign a trustee to -- to

1 any one of those districts or in any way at the moment.

2 The Board may take it upon itself to take that  
3 action later.

4 CHAIRMAN PERATA: What are the options that you  
5 have under the law?

6 MR. MITCHELL: There are seven of them. Let's  
7 see if I can get all seven of them. Johnathan, maybe we can do  
8 this together.

9 CHAIRMAN PERATA: Don't worry. We can't hold you  
10 to it. We don't know.

11 [Laughter.]

12 MR. MITCHELL: I think that there is an expert or  
13 two behind me.

14 CHAIRMAN PERATA: What seven would you like?

15 [Laughter.]

16 MR. MITCHELL: President Noonan refers to these  
17 as the seven deadly remedies? Cures. The seven deadly cures,  
18 and compares them often to leeches.

19 The first and lowest level treatment available is  
20 the recommendation of a change in curriculum, required change in  
21 curriculum, followed by a change in personnel, followed by the  
22 opportunity to contract out or create charters within the  
23 district either in toto or in part.

24 How am I doing, four.

25 CHAIRMAN PERATA: New uniforms.

26 MR. MITCHELL: New uniforms, yes. The Members of  
27 the Senate Rules Committee taking over individual districts.

28 [Laughter.]

1 MR. MITCHELL: A little known provision.

2 The abolition of the district as an entity, and  
3 the farming out of the schools to surrounding districts,  
4 trusteeship, and I'm missing shifting the resources, the Title  
5 One resources, and pupil transfer.

6 So, the Board has all of those arrows in its  
7 quiver, and as I say, is working with the Superintendent of  
8 Public Instruction, the Secretary's Office, to analyze a  
9 combination of programs that would be appropriate.

10 CHAIRMAN PERATA: So, these are not mutually  
11 exclusive?

12 MR. MITCHELL: Correct.

13 CHAIRMAN PERATA: That's helpful.

14 Prior to the time that these school districts red  
15 lined, what were we doing as a state, or what was the Board  
16 doing to encourage them to help them avoid what happened? Did  
17 we do enough? Would you prefer that we could have had some  
18 other opportunities on the other end of the problem that we  
19 didn't have, that you didn't have? And you can talk about money  
20 in here; it's okay. It's permitted.

21 MR. WILLIAMS: I think the state did notify,  
22 first of all, obviously with the introduction of the NCLB law,  
23 meet with district leaders in order to get underneath,  
24 understand the implications of the No Child Left Behind law and  
25 all of its implications. So, notice was certainly done.

26 In terms of additional resources, obviously  
27 resources with accountability can only help. But the challenge  
28 is finding the right combination of those additional resources



1 with the needed accountability.

2           You referenced charter. I think, as you pointed  
3 out also, I was a classroom teacher prior to starting some  
4 charter schools, but it was based on my belief that we needed to  
5 tighten our own, within our own ranks, our accountability. And  
6 that's what we've proceeded to do, and are now graduating kids  
7 who attend some of the best schools in our state.

8           So, flexibility is also something that we need to  
9 look at as we go down this path.

10           CHAIRMAN PERATA: He needs to get somebody into  
11 UCLA. So, just in passing, I want to mention it.

12                           [Laughter.]

13           MR. MITCHELL: We're working on it.

14           I agree with Johnathan and would simply embellish  
15 his answer a little bit in two ways.

16           One, I think that this is not surprising, or  
17 ought not to be surprising news to these districts because they  
18 have been in program improvement status for sometime. And the  
19 Superintendent and the department have been at work with those  
20 districts, I think, at the district level and also at the school  
21 level.

22           So, the state intervention program and others are  
23 really designed to take districts at an early -- districts and  
24 schools at an early state in their problems and try to work them  
25 out.

26           But I think one of the things that hampers --  
27 hampers California, and certainly hampers these districts, is  
28 going to be a familiar topic to all of you, and that's the lack

1 of a well-oiled, comprehensive, accurate, timely data system.  
2 So, I think that the data system that we have built is largely a  
3 pipe that runs up, and it provides data that helps all of us  
4 think about compliance-related issues. But the data doesn't  
5 fall, much less flow, back down effectively enough for school  
6 district leaders, principals, much less classroom teachers to be  
7 able to use it on a day-to-day basis to improve practice,  
8 because after all, that's how we improve; right? We try  
9 something. We learned whether it worked or not, what things  
10 worked about it, and we'd go back and do it again.

11 That's very difficult to do, and one of the  
12 challenges that we will face as we go to work in these  
13 districts, and the very hard work of turn-around, is still a  
14 data system that's inadequate to that task.

15 CHAIRMAN PERATA: Has there been any discussion  
16 about the state capitalizing? Somebody told me we can't bond  
17 for IT. Do you know if that's true, Jack? I mean, if we want  
18 to capitalize the system like that, like we do with roads,  
19 because where you hear that most; and it has the most resonance  
20 is in education and health care.

21 If you look at the Kaiser model, they have done  
22 that. It's going to revolutionize the delivery of medicine.  
23 So, I concur with the importance of that.

24 The one you left out were the parents. It's  
25 easier for the parents to figure out what's going on, too, if  
26 they have access to that data.

27 MR. MITCHELL: That's right; thank you.

28 CHAIRMAN PERATA: On the achievement gap, is

1 there a preferred strategy to address that particular issue, the  
2 achievement gap in your minds?

3 MR. MITCHELL: You're doing it.

4 MR. WILLIAMS: We are doing it. One, again, is  
5 making sure that the teachers and the administrators have the  
6 resources that they need, the professional development.

7 But we also make it very clear with our  
8 professional staff that we are accountable for the students'  
9 academic achievement at our school. It's something that we have  
10 as a belief, as a foundation.

11 But again, it is because we are a charter, we  
12 have the additional flexibility to do so. The current system  
13 doesn't have that level of flexibility. Perhaps that's  
14 something that should be explored.

15 CHAIRMAN PERATA: Just give me an example of  
16 something you can do that I, as the Superintendent of Taft  
17 Unified, can't do.

18 MR. WILLIAMS: Well, one thing that we can do is,  
19 we can have an agreement with our faculty that you will be  
20 evaluated based on how well the children do.

21 CHAIRMAN PERATA: Performance.

22 MR. WILLIAMS: Absolutely. That's something that  
23 was fundamental to -- to our starting the school. We saw  
24 situations that, yes, though they may have been few, that were  
25 very frustrating when we walk into classrooms and see teachers  
26 reading newspapers. That, unfortunately, does happen from time  
27 to time, and unfortunately our profession then gets defined by  
28 those few.

1                   So that we wouldn't have any, we started our own  
2 school to make sure that everyone was on task and focused on the  
3 children.

4                   One thing we did early on also, and I think LAUSD  
5 followed our lead, was we implemented an all-day kindergarten.  
6 We saw the -- and obviously I think most folks in this room  
7 would agree -- that early childhood is critical. So, we said  
8 not only is it critical, but we need more of it. So we started  
9 our all-day kindergarten. And LAUSD has since followed that  
10 lead.

11                   As well, we established a preschool, so we  
12 currently have preschool through high school on one campus.  
13 Again, something else that you very rarely see in our current  
14 system. But we believe that builds the kind of family and focus  
15 that our entire school community needs, and it really allows for  
16 very deep relationships to develop over an extended period of  
17 time, something that is not as frequently done in our current  
18 system.

19                   That's just a couple of examples.

20                   As well, we've keyed our system to making sure  
21 that every child is prepared to go to a university. In our  
22 neighborhood, that doesn't happen as often as we'd like, and  
23 we'd like to think that we're part of the catalytic process  
24 toward that end.

25                   MR. MITCHELL: I think from the position of the  
26 Board and maybe more generally, when I look at Johnathan's great  
27 successes, and sort of put on my hat as a researcher, and think  
28 about that, and think about how can -- what's the code in there,



1 I'm tempted to say, "Well, it's everything that he said, and now  
2 let's just replicate it and require it throughout the state."

3 But I go back to my earlier comment about the  
4 diversity of the state, the diversity of the needs of  
5 communities and kids, and believe that one key -- and I took  
6 this from the great Achievement Gap Summit that the  
7 Superintendent led a couple of months ago -- that the answer is  
8 probably a lot of small answers mixed together in a way that  
9 makes sense in a local community.

10 What enables that is either the kind of charter  
11 environment that Johnathan is working in, or a fundamentally  
12 different approach from the state and the Board about waivers of  
13 practice and process requirements, so that the professionals on  
14 the ground where these kids live and work can change the school  
15 day, can change the school week, can change the length of the  
16 school year, can create new programs and try them, and test  
17 them, and if they don't work, try something else.

18 So, I think that we as a Board need to be very  
19 conscious of both maintaining the high coherent standards for  
20 the state, but encouraging real experimentation at the local  
21 level.

22 One of the things, Senator, that you said awhile  
23 back was about how dispiriting teaching -- dispirited teachers  
24 have become, and how dispiriting the profession looks from  
25 outside.

26 I don't think that we've done a good enough job  
27 as a Board or as a state in using professional development and  
28 encouraging our colleagues in the universities to use

1 professional development to encourage teachers to teach the same  
2 material in different ways. What we've decided to standardize,  
3 particularly in elementary school, are the materials, the  
4 standards, and an assessment program.

5 But how that material is delivered ought to vary  
6 by the needs of kids. I think even by the needs of individual  
7 kids. The buzz word is differentiated instruction, and I think  
8 we need to encourage it.

9 But back a notch, I think that this is one of the  
10 real opportunities in the state for a redevelopment of career  
11 and technical education, learning that's tied to real world  
12 examples that will be more relevant to students, and I think be  
13 a part of the solution of closing the achievement gap, as well  
14 as closing the dropout rate.

15 CHAIRMAN PERATA: One thing I'd encourage you to  
16 begin to think about, because I think inevitably if not this  
17 Legislature, whoever follows us, we're going to have to -- I  
18 don't like the word devolve -- but we're going to have to return  
19 to local control the kind of flexibility that existed when  
20 school boards set the ad valorem tax rate. So, even if we need  
21 to have flexibility that is authorized by a waiver -- that's  
22 scary enough; if we've got a data system maybe not -- but we  
23 need to figure out some way where you can still say that there  
24 is a statewide standard of achievement that's important, but  
25 that if you're in this community or that community, even within  
26 the same district, that the site really rules.

27 How they arrive at that, you touched on it before  
28 and I think you probably have forgotten more about this than I

1 know, but we're not going to be able to afford at the state  
2 level, we're not going to fund schools adequately enough at the  
3 state. I can't figure out beyond that how we deal with that,  
4 but I will guess that those 23 schools last night that the  
5 Governor cited, I could guess where they were. One of them is  
6 right in the middle of Oakland. It's called Piedmont.

7 MR. MITCHELL: Right.

8 CHAIRMAN PERATA: It's its own city.

9 So anyway, you took the job. You don't need me  
10 to give a lecture.

11 The last thing I want to mention is, and this  
12 goes back to teaching to the test, when I first started teaching  
13 in the early '70s, we were going through the open classroom, you  
14 know. And it was wrong to have bells because it confused  
15 people, or it reminded people of the military, I guess. We were  
16 so screwed up.

17 And we had social scientists really acting as  
18 educators. This is what teacher development was: sitting  
19 around on pillows, talking about some stuff. And as long as you  
20 never brought the word "accountability" up, you were allowed to  
21 stay. It wasn't quite EST because we got to go to the bathroom,  
22 but I'm telling you, it was pretty brutal. And at that time,  
23 you know, it was free form.

24 We used to use New York. That was before we  
25 started using Arkansas as the example. We said in New York,  
26 they teach to the test, the Regent's Test, so they were teaching  
27 to the test and we didn't want to do that.

28 So, here we are now, teaching to the test. And

1 it would be interesting, and we've done some staff work just  
2 trying to quantify the number of hours of testing, and  
3 preparation for testing, and then how much time is left for the  
4 other things that some of us would consider important as well.

5 But I know why we're doing it. I know your  
6 answers indicated you thought we need to do better to explain  
7 why testing.

8 Well, I think we need to do more than that. I'm  
9 not sure what it is, candidly. But I don't think explaining to  
10 a lot of the teachers that I talk to anything would have been  
11 satisfying to them for the reasons that they entered the  
12 profession and the job that they felt they could capably do.

13 So, as you go through all this kind of stuff,  
14 being in a classroom should not be like going to the DMV:  
15 There's a right answer to what this means, and if you get that  
16 you're on to the next class.

17 I'm done. Alex?

18 SENATOR PADILLA: I'll pick up where he left off.  
19 He covered a couple of areas that I had comments or questions,  
20 including No Child Left Behind. I don't know if there's  
21 anything else you'd like to add as to the impact on the state,  
22 and where do we go from here? What can we do at the state and  
23 at the local level?

24 Before I ask my other couple of questions,  
25 anything else either of you wish to add?

26 MR. MITCHELL: I'll say, and I said it in my  
27 written responses, but for the discussion I do believe that  
28 there -- we have an opportunity with the reauthorization of No



1 Child Left Behind to do some work to bring No Child Left Behind  
2 into sync with California's own assessment program. I think  
3 that a part of the complication and the confusion in the field  
4 has to do with the train wreck that is the meeting of those two  
5 lines. And I think in particular, and it ties back to the  
6 comments that I made earlier about the data system.

7 I think it's high time that we talked about  
8 growth, and we talked about longitudinal assessment of student  
9 learning in a way that could allow us to really focus in on how  
10 students are progressing against California's high standards.  
11 And No Child Left Behind does not allow us to do that yet. So,  
12 I think we -- I know the Superintendent is deeply concerned  
13 about this and committed to that and would want the Board to  
14 support it.

15 SENATOR PADILLA: Getting to what I consider one  
16 of the roots of the performance challenge, and whether you call  
17 it the achievement gap or anything else, in California we have a  
18 significant sized student population known as English language  
19 learners.

20 Do either of you have an estimate as to what  
21 percentage on a statewide basis of our students make up that  
22 English language learner population?

23 MR. WILLIAMS: Off the top of my head I'm  
24 thinking maybe 25-30 percent.

25 SENATOR PADILLA: That's what I'm told as well,  
26 somewhere in that range.

27 SUPERINTENDENT O'CONNELL [FROM THE AUDIENCE]:  
28 K-12 is 25 percent. Kindergartners this year is 39 percent.

1 SENATOR PADILLA: I'm glad you're here.

2 Is this a population that we expect to shrink, or  
3 that we expect to grow in the next ten to twenty years?

4 MR. MITCHELL: Grow.

5 SENATOR PADILLA: And the Superintendent is  
6 giving me a thumbs up because I'm doing a good job?

7 [Laughter.]

8 SENATOR PADILLA: He did it with a smile.

9 So, let's focus on that population for a minute.  
10 We ask overall questions about best practices. We ask overall  
11 questions about how we're doing, what works, what doesn't work.

12 For the English language learner population, if  
13 it's making up such a big chunk of students in California, we're  
14 not going to get meaningful improvements in test scores, student  
15 achievement, without seeing significant gains in this section of  
16 our student population.

17 So, talk about English language learners  
18 specifically. Given your experience, your expertise, both of  
19 you, what recommendations do you have for your colleagues at the  
20 Board and for colleagues in local districts, and for colleagues  
21 in the classroom?

22 MR. MITCHELL: I think a couple of things. And I  
23 think that the -- I want to agree first with the premise, that I  
24 think whether we're talking about the measurable achievement  
25 against the measures that we currently have, or the growth  
26 measures that we ought to have, the English learner population  
27 is a critical population.

28 SENATOR PADILLA: And I guess for that, part of

1 the premise is, do we have different trends as far as test  
2 scores, reading ability, math competency between the English  
3 language learner population and outside that population? Or,  
4 are they given same trends?

5 MR. MITCHELL: The trends are roughly the same,  
6 but there is an ordinal decrease in the trend lines for English  
7 learners. There're a couple of exceptions to that around a  
8 couple of the assessments, and this is pretty new news that the  
9 Board has been getting thanks to the department's continuing  
10 analysis of the assessments.

11 So, I think a couple of points. The Board  
12 believes this is an important population on which to focus and  
13 is administratively establishing an advisory panel to help us as  
14 we move forward in thinking through what ranges of options. So,  
15 that's the first thing: Yep, we're signed up to the program,  
16 and we know that we need more consistent advice, not only from  
17 members and staff, but also from the field. So, we're setting  
18 about, under President Noonan's leadership, building that  
19 capacity.

20 Second, in our materials adoptions we have  
21 continued to work to create -- to get publishers to create  
22 supplemental materials that are aimed at advancing English  
23 language development at a good pace and to scaffold subject  
24 matter learning for English learners.

25 Third -- and so I think that that's some good  
26 news about how we're moving forward.

27 On the not so good news side, I think we are just  
28 beginning to understand the range of best practices in the

1 classroom and at the district level that are really making kind  
2 of break-through changes for English learners. We as a state --  
3 and no state is doing this well, by the way -- but we as a state  
4 need to be orders of magnitude better than we are today at  
5 collecting best practices, codifying what's working in those  
6 best practices, and getting them back out to the field in ways  
7 that they can be used, and used and modified.

8 Just today, in line with Title Three regulations  
9 under No Child Left Behind, the Board is now working with  
10 districts whose English language development growth trajectory  
11 has not been adequate to expectations. And so, we are now --  
12 the department is putting teams in the field around some of  
13 those best practices as an installment against that overall  
14 plan.

15 So, I think that we're making headway. We know  
16 as a board, as you know, Senator, very directly and those of us  
17 in Southern California and Los Angeles know from our lives  
18 there, this is an issue that won't go away. It's also not a new  
19 issue. English learners don't come in at kindergarten and then  
20 be English fluent and academic English fluent by third grade.  
21 English learners come to us in kindergarten, and then in fifth  
22 grade, and then eleventh grade. And so, we need to be, again,  
23 as flexible as we can to enable schools and districts to meet  
24 the unique needs of those differentiated populations through the  
25 system.

26 SENATOR PADILLA: Mr. Williams?

27 MR. WILLIAMS: I think Ted laid it out pretty  
28 well there. One, as a board, again, we've adopted common and



1 very high standards for all. I think it starts there, because  
2 if we're expecting different things from different groups, we're  
3 setting up an unequal system, which has been my -- one of my  
4 concerns around materials aspect.

5 But beyond that, we need to localize the focus,  
6 and look at what is happening on the ground. We've started one  
7 school, or two schools actually that provide a pipeline pre  
8 K-12. We've opened a third school that is a dual language focus  
9 school, and we're looking at the trend line we're seeing against  
10 performance, dual language, English and Spanish. And we're very  
11 much excited about the trend that we're seeing from that  
12 brand-new school that's only four years old.

13 So, we do need to look at various models, and  
14 they need to be based on the local population.

15 SENATOR PADILLA: So from here forward, how is  
16 the Board structuring, maintaining this as an ongoing area to  
17 pay attention to? Is there an annual reporting? Is there a  
18 tracking system of some sort? How can I, as a Member voting  
19 today, know that we're not just talking about it today, and a  
20 year from now it's dropped from the radar? That we're back here  
21 a year from now, two years from now, ten years from now, staying  
22 on top of this?

23 MR. MITCHELL: We don't want that to happen,  
24 either. And the reports that the Board receives from the  
25 department on each of the areas of the assessment program are  
26 broken down so that we have as laser-like a focus as we can  
27 possibly get on targeted subgroups, among them English learners,  
28 African American students, students living in poverty. And in

1 fact, this meeting we're scheduled on just such a report, and  
2 those will continue not just annually, but those will continue  
3 any time and every time we have an assessment before us so that  
4 we can see how different populations fared in those assessments.

5 To Johnathan's point about making sure that we  
6 have common and high standards for all, and are not providing or  
7 encouraging a watered down version of education to any  
8 subpopulation, that oversight happens in the materials adoption  
9 process. And so, while we certainly -- we consider the needs of  
10 a variety of different student populations in the materials  
11 adoption process, we are also keenly concerned that they not in  
12 any way -- that any supplements diminish the quality of the  
13 curriculum itself.

14 SENATOR PADILLA: Question about charter schools  
15 for Johnathan. I've heard concern from some quarters that the  
16 Board overall is heavy charter school, has a bent because of the  
17 number of Board members that come from that arena as opposed to  
18 others.

19 Has that been your observation, your experience  
20 at the Board? If it is, is that necessarily good or bad? If  
21 it's not, then are we being fair as a board overall?

22 MR. WILLIAMS: There are several of us who are  
23 charter School supporters who serve on the Board. I think the  
24 good news is that -- that it is all around making sure that our  
25 students learn, because as you're well aware, if charter schools  
26 don't perform, changes happen and they happen rather quickly.  
27 And it's the high standards that we're all focused on, making  
28 sure that it's something that transfers beyond just the charter

1 schools, but into the traditional school system.

2 Charter schools were set up really as research  
3 and development arms to see what -- what are the best practices  
4 that, if given freedom, we might able to realize to solve a  
5 problem. And I think that's the good news.

6 I think there's certainly things that we are all  
7 mindful of in terms of what might be perceived as a conflict of  
8 interest, I think is probably where you're going. And I think  
9 toward that end, one thing that we're fortunate to have is legal  
10 counsel that make sure that as items come forth, that we are  
11 briefed and let known that if in fact there is a conflict that  
12 exists, that we should recuse ourselves.

13 SENATOR PADILLA: I wasn't coming from the  
14 conflict of personal interest standpoint but from a policy  
15 interest, maybe, at most.

16 Describe to me then what policy or what  
17 structure's in place to do the assessment of that charter school  
18 population? Charter schools, are they doing better, not doing  
19 as well as their noncharter school counterparts when it comes to  
20 test scores, and high school graduation rates, and math, reading  
21 at grade level, math competency, et cetera?

22 MR. WILLIAMS: And again, I think it depends on  
23 whose data set you're looking at, because -- but one thing that  
24 I think we can generalize is that if you look at secondary  
25 schools, that charter schools are showing that they are  
26 performing slightly better than, and it decreases as it goes  
27 down to elementary schools.

28 I think that what it speaks to, though, is at the

1 elementary level, our traditional system actually really is  
2 making positive gains and doing rather well. But at the high  
3 schools and middle schools, where we see that the charter  
4 schools are performing slightly better than our traditional  
5 school system is where we can hopefully learn a lot that, again,  
6 will transfer into the traditional system.

7 SENATOR PADILLA: If you're able to look at that  
8 pool of charter schools today, and let's just keep it to the  
9 middle and high school sectors, given your comment a minute ago  
10 about elementary schools, what is it that charter schools are  
11 doing at those levels that's working? What have we learned from  
12 some charter schools at those levels that we learned the hard  
13 ways doesn't work, that noncharters should not replicate?

14 MR. WILLIAMS: I think one thing particularly at  
15 the secondary level is, we have what we've come to know and love  
16 as comprehensive high schools rather than -- and the good news  
17 is that we're starting to see smaller learning communities  
18 throughout our state. But I think charter schools have served  
19 as somewhat of a catalyst towards getting the system to focus on  
20 breaking down these large, comprehensive schools to ones  
21 tailored more towards either student interest or industry needs.

22 MR. MITCHELL: And I would add to that, because  
23 we've spent some time looking at charter school performance not  
24 only in California but in New York, in Philadelphia, Washington,  
25 D.C., and Chicago. And in terms of -- first to your point about  
26 whether there's any generalized ability across the entire  
27 charter sector, no. The charter sector is very diverse. It  
28 goes from very small single-site charters that are established



1 by parents and a couple of teachers to meet a very, very  
2 specific need in the community, to charter management  
3 organizations that have under their wing 10, 15, 20 schools.  
4 And there the experiment is also about what an innovative school  
5 district might look like, but that's secondary to your point.

6 One of the things that we're finding is that in  
7 addition to the ability to focus, student-teacher ratio is  
8 important, and a lower student-teacher ratio is important to  
9 build the kinds of relationships that Johnathan was talking  
10 about earlier, so that students have adults who know them and  
11 who they know, who can be a part of the choices that they make  
12 as they work their way through adolescence. And those choices,  
13 whether those are choices to stay in school or leave school, to  
14 work hard or not work hard, to engage in certain kinds of  
15 anti-social or pro-social behavior, to take risks with their  
16 personal health and safety. Having adults involved in that  
17 beyond the family turns out to be critical.

18 Culture also is important. If you look at the  
19 highest performing sets of charter schools in the country, they  
20 are very diligent about how they think about the culture of the  
21 school, the norms, the practices, the rituals.

22 Senator Perata joked about uniforms a while ago.  
23 Well yes, that's a part of the high culture of most of the high  
24 performing charter schools, particularly in urban areas.

25 SENATOR PADILLA: Last question, is there such a  
26 thing as too many charters?

27 MR. WILLIAMS: Too many charters? Well, the  
28 thing that I hope again is that, and as many of you have

1 articulated, that there is a need for a great deal more  
2 flexibility. And if we can figure out a system that has the  
3 appropriate blend of accountability and flexibility, really and  
4 truly all schools would look more like, and feel more like,  
5 charter schools.

6 MR. MITCHELL: I agree.

7 SENATOR PADILLA: I just wanted to remind us all  
8 of that concern from some quarters, or that fundamental question  
9 about the role of charters: the arsenal and incubators of  
10 innovation that should be spread to noncharters, but how many is  
11 too much of a concentration? And how few to have enough of that  
12 experimentation going on? It is a sensitive balancing point.

13 MR. MITCHELL: I do think we probably need to  
14 have more charters to be able to reach a critical mass so that  
15 they are more -- they are less weird in the environment.

16 SENATOR PADILLA: That's a technical term.

17 MR. MITCHELL: That is a very technical education  
18 term.

19 [Laughter.]

20 SENATOR PADILLA: Thank you.

21 SENATOR DUTTON: Just a couple of questions. I  
22 think I'd like to talk a little bit about career tech and the  
23 federal dollars that are now recently becoming available.  
24 Specifically with regards to that, what's our status? Is there  
25 anything we need to do as a Legislature to further help to gain  
26 full access and benefit from those dollars?

27 MR. MITCHELL: Thank you for the offer.

28 I think the good news is that we are at the very

1 final stages of completing our plan, our CTE plan to submit to  
2 the federal government, and that it is a -- it's a very good,  
3 very sound plan. It involved members of the State Board, staff  
4 from the department, as well as the community college side.

5 And we've got a very good plan to spend every  
6 dollar that we can squeeze out of Washington.

7 And I think to the point that we've been coming  
8 back to again and again over the course of the afternoon, also  
9 the beginnings of a very good assessment plan so that we know  
10 exactly what's happening, and not only what's happening with  
11 those dollars on the compliance side, but on the outcome side so  
12 that we really begin to understand what the impact is of a  
13 variety of different CTE programs on the students and the  
14 adults, young adults who go through them.

15 SENATOR DUTTON: When do you anticipate that  
16 report?

17 MR. MITCHELL: It's on our docket this week.

18 SENATOR DUTTON: It's on this week?

19 Now just a little bit about dropout rates and so  
20 forth. I think one of the challenges most of us have had, we  
21 get different numbers from different people. Nobody can really  
22 ascertain for sure what exactly is happening.

23 Is there any way to really get a better handle on  
24 it so we can actually -- because it's tough. I think it's tough  
25 for a lot of us to really try to deal with it unless we actually  
26 can have a better idea of what the actual problem is.

27 I'm looking at possibly a million, million-five  
28 kids that we lose. And we lose them big time if we can't get

1       them educated and with some kind of skills.

2               So, I'd appreciate it if you can share your  
3       thoughts with regard to how do we get more factual information?  
4       And specifically, what ideas do you have regarding encouraging  
5       young people to actually stay and finish their education, at  
6       least the K-12? And here again, I'm looking at also career tech  
7       opportunities and perhaps getting them interested in some type  
8       of career opportunity.

9               MR. WILLIAMS: I think the first thing that we've  
10      got to do is agree on what methodology we're going to use in  
11      order to identify who the dropouts are. They vary from group to  
12      group.

13              The other thing, as Ted also mentioned earlier,  
14      was just around having a more robust data system that better  
15      enables us to do just that. We're not there yet.

16              MR. MITCHELL: I think one of the issues is the  
17      change in the methodology, to standardize the methodology, which  
18      has been an important step.

19              The creation of a unique student identifier and  
20      its deployment has been another critical step. And so I think  
21      as we develop the data system, we will get better information to  
22      be able to answer the core question of how many -- three  
23      questions: How many, where, and who?

24              And I think we all know that the answer to the  
25      "who" question will track almost exactly on the other issues  
26      that we've been talking about today regarding the achievement  
27      gap.

28              I think, Senator, in another part of our



1 discussion about flexibility, and differentiated instruction,  
2 and relevance, to add a new word, I do think that we have to  
3 challenge -- push back out to the education community the  
4 challenge to develop attractive curriculum and pedagogical  
5 models that teach the standards with the same degree of rigor,  
6 but approach them in a different way. And the Board ought to be  
7 attuned to the need to create that flexibility and those kinds  
8 of waivers.

9 I believe the career and technical education is  
10 one of the methodologies that we can use to great effect, both  
11 in terms of creating intellectual hooks on which students can  
12 hang very complicated bits of technical learning. And I think  
13 that it's very attractive to students who don't see themselves  
14 sitting in my classroom, hearing a lecture about Horace Mann.  
15 That's only 99.9997 percent of the population.

16 [Laughter.]

17 MR. MITCHELL: So, I think that that's a part of  
18 the -- that's a big part of the answer. And the Governor, as  
19 you know, has really kept a steady drum beat about the  
20 importance of career and technical education. And it's been  
21 remarkable to see over the years how unlikely compatriots have  
22 come around to that standard as career and technical education  
23 has moved away from being thought of as -- we've moved away from  
24 thinking of it as a tracking exercise to actually seeing it as a  
25 civil rights benefit to the equitable distribution of education.  
26 So, I think that's really important.

27 One of the things that we did today as well was  
28 advance the idea of creating whole sets of curricular modules in

1 the area of environmental education. That's another place where  
2 there's high, high student interest. And Monica Liu has been  
3 very important in our discussions on the Board in helping remind  
4 us of the importance of those kinds of issues as well.

5 So, I think that there are ways for us to  
6 encourage the development, broader development, of curriculum  
7 and pedagogy still within the construct of our very high  
8 standards and curriculum.

9 CHAIRMAN PERATA: We're going to take a brief  
10 break so her fingers can be recharged.

11 [Thereupon a brief recess was taken.]

12 CHAIRMAN PERATA: We're going to resume.

13 Senator Ashburn.

14 SENATOR ASHBURN: Just a couple. I want to  
15 associate myself with the comments of Senator Perata at the  
16 outset, except for his comment about Proposition 13.

17 But certainly in terms of the aspect of these  
18 kids only have a short period of time, and we need to do  
19 everything we can, and flexibility, and local control, and  
20 returning the authority into the classroom. If that's a  
21 Democrat point of view, and I certainly adopt that as a  
22 Republican point of view, I don't see why we can't make more  
23 progress.

24 So, I encourage you to pick up on the  
25 conversation that we've had here today, even though we've only  
26 brushed on a few topics.

27 I just want to raise the issue that I raised with  
28 you yesterday in our excellent conversation, and that has to do



1 with textbooks and education materials. And it's time to move  
2 beyond the textbook and these extraordinarily expensive, heavy,  
3 out of date. We are all manipulated by those who are in the  
4 textbook business.

5 So, I would urge that the Board convene a  
6 committee of your Board to take a look at instructional  
7 materials that would move us to a new era of modern technology  
8 where we can put this on to discs and make it available on  
9 computers. And there'll never be an issue about an inadequacy  
10 of textbooks in the classroom, or of kids lugging around 50  
11 pounds, or from an environmental standpoint the trees that are  
12 cut down.

13 CHAIRMAN PERATA: You always slip that  
14 environmental stuff in. I'm tired of it.

15 [Laughter.]

16 SENATOR ASHBURN: So, we talk about so many  
17 different reforms, here's one we can do, and California ought to  
18 be cutting edge. And I think we could do it in short order and  
19 have strong bipartisan support around a solution.

20 I think you're both extraordinary, and I wish you  
21 well.

22 MR. MITCHELL: Thank you, Senator.

23 CHAIRMAN PERATA: Senator Cedillo.

24 SENATOR CEDILLO: I attach myself to many of the  
25 questions of my colleague, Senator Padilla, particularly on the  
26 challenges that confront our society with English language  
27 learners.

28 We were once the number one funded public

1 education system in the nation. That is no longer the case.  
2 Fortunately, we still remain an economic power in the world, but  
3 I don't know how much longer we can sustain that if we're not  
4 doing the technical education, training for new fields and new  
5 industries, and doing the more traditional education and  
6 training.

7 Also, it has a lot of ramifications: national  
8 security and our economic security, et cetera.

9 Talk to me for the moment of the impact on  
10 today's state budget, our budget K-12? What it means? Why  
11 we're not number one any more? And how long we can sustain  
12 that? What would it be like in the ideal world?

13 But two, we have a real budget, we heard from the  
14 Governor yesterday, that we're going to anticipate the impact of  
15 the California state budget today on the state of education?

16 MR. MITCHELL: We have, speaking for myself and  
17 corporately for the Board, we have no insight into the proposed  
18 budget. We'll hear it probably shortly after you do.

19 It's no secret though that we do face  
20 double-digit, billion dollar budget deficit, and that there will  
21 certainly be some impact on our ability in the near and maybe  
22 even the medium run to provide the kind of program that we're  
23 doing today.

24 So, I think that it's going to be a challenge of  
25 straightened circumstances for the hard working professionals at  
26 the school site level and at the district level. And that it's  
27 our responsibility at the state level to take as much of that  
28 burden away from them as possible by making the dollars that are

1 available much more flexible to them so that they can deploy  
2 them where they believe it's needed.

3 That may look a lot in the short -- in the next  
4 year, that may look a lot like triage, that we might not make  
5 the kind of progress that we want to make. But I do think that  
6 that's our first order of responsibility.

7 MR. WILLIAMS: I agree with Ted.

8 [Laughter.]

9 SENATOR CEDILLO: Thank you.

10 Move the nominees.

11 CHAIRMAN PERATA: I usually forget to say that  
12 this is the time that those who want to come forward and say  
13 something nice may do so. It does not have to be elaborate; it  
14 doesn't have to be long.

15 Anybody who would like to come forward and  
16 support the nominees?

17 SUPERINTENDENT O'CONNELL: I wanted to make a  
18 quick reappearance on behalf of Johnathan. He's been on the  
19 Board for four years. And I want to thank you for his  
20 confirmation four years ago. He really has been a great member,  
21 a graduate of UCLA, as you have in your portfolio.

22 The question came up on the charter schools.  
23 He's been great on charter schools. I think it's important to  
24 keep in mind that a little over three percent of our students  
25 currently are in charter schools. And they do tend to be  
26 smaller schools and smaller learning communities that he talked  
27 about.

28 But there have been times when we've needed to

1 discipline, and even close some of the charter schools that got  
2 wayward for different reasons, primarily financial. He's been  
3 100 percent vote for us every time. When he speaks over at the  
4 Board, people really do listen. He really does his homework.  
5 Top of my head, I think he's missed one Board meeting in the  
6 last four years.

7 So, I did want to just make that comment. I  
8 didn't have a chance earlier. Thank you.

9 CHAIRMAN PERATA: Thank you. We appreciate that.

10 MS. GRIFFITH: Good afternoon, Senator Perata,  
11 Members of the Committee.

12 We want to commend the Governor -- Sherry  
13 Griffith with the Association of California School  
14 Administrators.

15 We would like to commend the Governor for his  
16 appointment of Dr. Ted Mitchell. The Association of California  
17 School Administrators represents over 16,000 district  
18 superintendents, and principals, and other school leaders in our  
19 public school system, and we know that Ted will bring the depth  
20 and breadth of knowledge that our system needs at this time,  
21 both from the K-12 perspective, but also the higher education  
22 perspective.

23 As a former Dean of the UCLA School of Education,  
24 Ted knows first-hand what it takes to train the best teachers  
25 and the best principals in California, and we think he  
26 understands the challenges that our administrators are facing  
27 today in their role as school leaders.

28 Really finally, one thing that we know about Ted



1 because we've worked with him in other capacities, he's actually  
2 advised the last three governors of the State of California in  
3 the area of public education and many of you in the Legislature.  
4 And we think that will bring the breadth that we need with the  
5 issues that the State Board faces in the coming years.

6 And finally, one thing that really pleases  
7 educators in California is that Mr. Mitchell has two children in  
8 the public school system in Tustin Unified. And what I share in  
9 common with him is a lot of heavy homework in the evening.

10 [Laughter.]

11 CHAIRMAN PERATA: Thank you.

12 MS. YOUNG: Hi. Thank you for allowing me to  
13 testify. My name is Caprice Young, and I am the CEO of the  
14 California Charter Schools Association.

15 I suppose the most important thing to say about  
16 these two men is that both of them do a good job of telling me  
17 no, and I respect both of them, and the movement respects both  
18 of them to work closely with them on behalf of all students in  
19 public education in the State of California, balancing the  
20 interests of all students in a way that we can improve public  
21 education for all kids.

22 CHAIRMAN PERATA: Thank you.

23 MS. YOUNG: Thank you.

24 CHAIRMAN PERATA: Anyone further?

25 Anyone here who wants to -- there's somebody here  
26 wearing a Cal jacket. Did you want to come and talk about the  
27 Stanford graduate.

28 [Laughter.]



1 CHAIRMAN PERATA: All right. You had your  
2 opportunity.

3 Come back, gentlemen. I want to thank you both  
4 for being here.

5 The Governor's made very strong appointments in  
6 the area of education, as he has in many other areas that have  
7 come before this committee. Probably the best that I could  
8 offer personally right now is, given where we are in the budget,  
9 that I agree with getting down to facts. It's a problem that  
10 has both reform and financial implications. And that you and I,  
11 and the Legislature, and the Board, and the Governor need to act  
12 as partners.

13 As you can see from the comments that were made  
14 here today from the dais, there's a lot more that we have in  
15 common than separates us. And I believe we're prepared to do  
16 some things that perhaps in any other time would seem bold, but  
17 now probably are necessary.

18 So, I would encourage you to stay close to us.  
19 Continue the working relationships that you have with people on  
20 the Education Committee, but all of us. We will take to heart  
21 what you have to say, because you've demonstrated that your  
22 heart's in the right place yourselves.

23 So with that, we would take a motion to approve  
24 both.

25 SENATOR CEDILLO: So move.

26 CHAIRMAN PERATA: Call the roll, please.

27 SECRETARY WEBB: Cedillo.

28 SENATOR CEDILLO: Aye.

1 SECRETARY WEBB: Cedillo Aye. Dutton.

2 SENATOR DUTTON: Aye.

3 SECRETARY WEBB: Dutton Aye. Padilla.

4 SENATOR PADILLA: Aye.

5 SECRETARY WEBB: Padilla Aye. Ashburn.

6 SENATOR ASHBURN: Aye.

7 SECRETARY WEBB: Ashburn Aye. Perata.

8 CHAIRMAN PERATA: Aye.

9 SECRETARY WEBB: Perata Aye. Five to zero.

10 CHAIRMAN PERATA: Congratulations to both.

11 [Thereupon this portion of the  
12 Senate Rules Committee hearing  
13 was terminated at approximately  
14 3:02 P.M.]

15 --ooOoo--  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 11<sup>th</sup> day of January, 2008.

  
EVELYN J. MIZAK  
Shorthand Reporter

## APPENDIX

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## Responses to Senate Rules Committee Questionnaire

Theodore R. Mitchell

Nominee to the California State Board of Education

December 11, 2007

Senate Rules Committee

### Goals and Responsibilities

DEC 11 2007

Appointments

#### ***1) What do you hope to accomplish as a member of the State Board of Education? How will you measure your success?***

The State Board's responsibilities are to implement policies that maintain high standards for California's students and educators and to guide the Department in helping schools, districts, and communities meet those goals. Increasing the proficiency of California's diverse student population across our rigorous content standards is not simple, nor does one size fit all. I hope as a member of the Board to balance the need for common goals and differentiated programs and means. I hope, as well, to bring to the Board a focus on the research base that can help us understand how best to address some of our most pressing concerns, including appropriate education for special needs populations, the persistent achievement gap, and the complex needs of English learners. Finally, I hope to foster a strong and mutually respectful relationship between the Board, the legislature, and other stakeholders in and out of Sacramento.

As we hold our schools accountable for student performance, I think the Board, too, should be focused on and held accountable for taking actions that raise student achievement, particularly among traditionally underserved populations. In addition, I'd hope to be able to see marked improvements in the frequency and quality of communication between the Board and the legislature and between the Board and the Department.

#### ***2) How do you reach out to various education stakeholder groups? What have you done to improve communication and collaboration between the Board and the Legislature, education organizations, and parents and other advocates on significant education policy issues?***

As a general matter, the Board's executive office is in constant communication with various stakeholder groups on the Board's behalf. In addition, the Board's



formal processes have expanded of late to include invited presentations and discussions with members of the legislature, either at Board meetings or in connection to our committee work. We also strive to make our deliberations and discussions as open and accessible as possible. We are in the process of reinvigorating or expanding Board committees into essential work areas, including NCLB, child nutrition, charter schools, and English learners.

That said, I feel very strongly that California's policy environment requires broad and less formal collaboration if we are going to have successful results. Historical patterns have led to distrust that can impede progress, almost as a default. I strive to operate collaboratively in all that I do – whether on the Board, in my work chairing the Governor's Committee on Education Excellence, at NewSchools Venture Fund, and in other work such as my service for EdVoice.

Through my work with the Governor's Committee, and extending back to my work at UCLA where I was Dean of the Education School, I have had the opportunity to build strong positive relationships with many of the education community and plan to rely on those relationships and networks to inform my service on the Board

***3) As a Board member, what training have you received regarding conflicts of interest? From whom do you seek advice on potential conflicts?***

Board staff and legal counsel, in conjunction with the California Department of Education's legal counsel, provide good general advice and training on both an individual and collective basis regarding conflicts of interest. In addition, prior to each Board meeting, staff analyzes our financial, employment, personal and other relationships and advises Board members on the appropriateness of participating in specific matters before the Board.

My service on many non-profit and several for-profit Boards, as well as my long service in the University of California system have made me particularly attuned to matters of conflict. In my current role at NewSchools, I am acutely aware of the potential for conflict and have recused myself already on several matters before the Board. I have tried to not only avoid technical conflict of interest but even the appearance of conflict, believing that abundance of caution in this regard is important in securing and maintaining the public's trust.

**The Achievement Gap**

***4) Current K-12 education is criticized for putting too much pressure on schools to "teach to the test," referring to achievement tests. How do you, as a Board member, evaluate California's testing policy and take steps to modify it, if necessary? How do you balance the need to measure***

***achievement against the danger of test results over-emphasis crowding out other objectives?***

Nationally, the standards movement was important in creating an environment in which we identified high standards of achievement for all students, not just for a few. It has taken our assessment system a decade to catch up with our standards, but I believe that we are closing in on the kind of alignment between standards and tests in Mathematics and ELA that make "teaching to the test" less problematic in those fields. That is, we are testing what we want students to know and be able to do. On the other hand, we have not created a broad enough set of aligned subjects. Science and Social Studies come to mind. There, we rely on the power of state adopted texts and curricular frameworks to carry the day. I would hope that over the next several years the Board can take up the issue of a broader array of tested subjects, balancing the need for breadth against the real concern over overtesting.

Teacher professional development, better community understanding of the whys and wherefores of the testing program, and spotlighting school and student achievement in matters not captured by API can all help moderate the perception that all the State cares about is STAR test results, but they remain important indicators for the State and for school leaders.

Finally, in the area of testing, I hope we can move forward, as a Board, a legislature, and an administration to finally build a data system that will allow us not only to better track student progress through the system and associate that progress with different inputs (teachers, interventions, special programs) but one that will allow us to develop tests that are vertically scaled and longitudinal, allowing teachers and principals, as well as parents, to track the growth of individual students against the standards over time and to better differentiate instruction across the system.

***5) In addition to increasing the API growth targets for subgroups, has the Board taken other actions to help narrow the achievement gap?***

The Achievement Gap is much on the mind of the Board, as it is on the mind of the Superintendent and members of the legislature. Within its purview, the Board has taken several steps to help narrow the achievement gap, understanding as it has done so that these are first steps. First, the Board has worked with the Department on the development of curriculum and instructional materials that target the needs of students who struggle to master content. One example of this is the built-in intervention programs in the mathematics instructional materials adoption from November 2007 aimed at assisting students struggling with mastery of mathematics content. Other examples include programs for struggling readers, English Language Learners and students unaccustomed to



traditional English vernacular within the Reading Language Arts programs that will be adopted by the Board next year.

The Board has also assisted districts in focusing on remediation and additional instructional support and intervention. The Board, with the help of the legislature, has focused on remediating students educational needs, for English learners, students with disabilities, and those struggling to pass the high school exit exam.

Finally, the Board has helped foster experimentation in the development of curricular approaches that may have positive effects on achievement and retention. These include more robust exploration of "multiple pathways" curriculum within Career and Technical Education programs that offer rigorous academic content connected to the world of work and charter schools, like High Tech High, that have created innovative approaches aimed directly at the achievement gap.

The Superintendent's recent Achievement Gap Summit gave us all a great deal of material to think about. As we move forward I hope that the Board, the Department, and the legislature can continue to foster this kind of experimentation, including allowing new approaches to the use of time in the school day and the school year in individual districts and schools.

***6) How do you respond to the criticism that current test scores are not a true reflection of achievement in California because the lowest performing students have already dropped out and are not being tested?***

The dropout problem underscores a number of issues critical for the State and the Board. First, because of our lack of timely, accurate, and comprehensive data, we have not been able to reliably calculate a dropout rate nor accurately assess who the dropouts are. What we do know is that too many students are dropping out and that those who drop out come disproportionately from traditionally underserved populations. Whatever the fine-grained analysis eventually shows us, the current state is unacceptable. I am quite pleased that the inclusion of the graduation rate into the API will keep us focused on this as a critical policy and performance issue

Second, qualitative data (interviews with both dropouts and those who stay in school) suggests a growing mismatch between the lives of students and the life of school. Simply put, the pedagogy of most high schools is aimed at college-going kids who either like to or are willing to put up with didactic, lecture-read-test, forms of instruction. For an increasing percentage of kids, high school is not relevant and not motivating. A month ago, we interviewed ten applicants for the student member to the State Board. To a person, they cited the lack of relevance as the number one cause, not only of dropping out, but of sporadic attendance, and even apathetic test taking. This is why it is important for the Board to encourage innovations that bring highly rigorous content to students in

new ways. Through my work on the Board of ConnectEd, The California Center for College and Career, and my work on the Joint Advisory Committee on Career and Technical Education, I have come to see great promise in courses, modules, and whole schools that link academic content to real world problems and experiences.

***7) The Board recently raised growth targets so that specific subgroups of students, including those with the highest dropout rates, will be expected to improve their performance. Given that the dropout rate in urban districts is estimated between 50 to 70 percent, how do you determine when or if the targets you are raising are increasing or decreasing the number of dropouts? What has the Board done to address this problem?***

(see above)

Notwithstanding these larger issues of data and new curricular and pedagogical approaches, we intend that increasing the targets will require school districts to focus more keenly on the performance of those subgroups, devoting additional attention and resources to helping them achieve at higher levels and rates. While it is too early to know if this change is having that desired result, it bears further study over the coming years' testing cycles.

***8) Recent adequacy studies note that poverty is the biggest indicator in student achievement. Do you believe the Board should look beyond the school to other factors such as health care, hunger, foster care, etc., in an effort to narrow the achievement gap? Has this finding impacted what the Board is doing to close the achievement gap in the state? How?***

The State as a whole ought to look seriously at these factors and seek to use State resources in ways that support the health and safety of students as prerequisites for learning in school. My work with my colleague Howard Adelman at UCLA over the years has convinced me of the importance of these "readiness" factors. That said, the Board's role in advocating, for example, integrated social services, is limited.

## **No Child Left Behind**

***9) Schools that do not make their growth targets for two consecutive years are designated program improvement schools. Approximately 100 of our poorest districts are facing corrective action under the requirements of NCLB. How does the Board plan to address the needs of those districts?***

The Board is charged specifically with taking corrective action with these districts and we will take this up in the coming months. As we know, California is a large and diverse State and the districts in program improvement are there for a variety



of reasons. It seems sensible that the “remedies” that the Board considers and ultimately approves ought to be customized to the needs of the individual districts and seek to address, specifically, the problems that led to PI status. I believe that all of these remedies ought to focus on capacity building and technical assistance at the individual school district level. The goal for any intervention is not just a quick fix, but a culture and practices that lead to increasing levels of student achievement going forward.

***10) What can the Board do to keep schools out of corrective action?***

As our data system continues to mature, the Board and the Department, as well as districts themselves, will become better able to catch the “early warning signals” that if left unattended, may lead a school or district into program improvement status. At the same time, through the capacity building programs, including the District Assistance and Intervention Teams and County Offices, the Board and the Department are helping districts design their own action plans for assisting struggling schools and districts. In our work on accountability for the Governor’s Committee, we came to admire highly systems of accountability that are “developmental” rather than what the filed calls a “gotcha” system. In a developmental system, districts seek to help all schools improve, often with the assistance of a school inspectorate that looks at issues of professional culture, student attitudes, and campus climate as well as test scores as a way of keeping schools out of crisis and on the path to success.

**California High School Exit Exam**

***11) There has been extensive discussion on options for students with disabilities who are unable to pass the exit exam. The Board has previously proposed streamlining the exam waiver process at the local level as an option. What course of action would you recommend?***

The Board and the Department have worked hard on this issue, and it is a complex one. The solution proposed by the Board in the spring was an effort to reach a measured solution that would simultaneously acknowledge that students with disabilities face unique challenges and reaffirm our intention as a State to make sure all students have access to and support for achieving the State’s stated curricular objectives.

Our research to date shows that the high school exit exam is not the primary impediment to graduation students with disabilities. A significant majority of students with disabilities who do not pass the exit exam are also unable to meet their other high school graduation requirements. It bears further study. The Board has called for more information and a review of current data this coming year.



**12) California spends millions remediating students that fail the high school exit exam. The test is at 8<sup>th</sup> and 10<sup>th</sup> grade levels of proficiency. What is the Board doing to improve first-time pass rates?**

As I discussed above, the Board has been developing instructional programs and materials in Reading Language Arts and mathematics with specific interventions and remediations built in for students who have fallen behind. In addition to this work, better information at the school and student level should help administrators create targeted interventions for students who fail to master essential “gateway” concepts in algebra or in ELA.

## **English Learners**

**13) Concerns have been raised that the state’s Reading Language Arts and English Language Development framework is not designed in a manner to ensure that a student will achieve sufficient proficiency in English to meet academic standards and pass the California High School Exit Exam. How do you respond to this criticism? What, if any, changes would you recommend to ensure each student has the instructional materials necessary to attain reading and English proficiency?**

The current instructional materials were adopted during the state’s initial Reading Language Arts adoption and have been in use since in 2002. We have learned much since then, particularly about the difficulties in mastering “academic English” necessary for mastering the curriculum at high levels that will prepare students not only for the exit exam but for success in college and career. The Board is in the midst of an adoption that will provide additional programmatic components that focus additional materials specifically on the needs of English Learners, struggling readers, and other students who need intervention and remedial assistance. These features of the new framework will be bolstered by a substantial increase in the number of quality instructional programs available for school districts following this adoption upcoming in November 2008.

That said, I do not believe that changes in instructional materials, however beneficial, will achieve the kind of breakthrough progress toward which we aspire. We cannot and should not attempt to “teacher proof” the curriculum. So as we focus on materials, we should also be learn from research which kinds of professional practice work best with English learners and promote those through active professional development efforts on professional development. In this way we will ensure that teachers are equipped to make full use of the instructional materials in the increasingly complex classroom environments that they face. For example, teachers should be given the tools to differentiate instruction to

help address the needs of English learners (and all students) at various levels of mastery of any subject matter. We are making improvements in this area with the Board's recent completion of regulations to improve the state's math and reading professional development programs by adding a specific English Learner component. We are in the process of reviewing training providers and materials that will ultimately be qualified to meet this need.

***14) Should the Board take any actions specific to English learners in an effort to narrow their achievement gap?***

Yes. (see above) As we build the capacity of schools to meet AYP, Reading and Language Arts Mastery stands out as a significant issue. Furthermore, anecdotal evidence suggests that continued frustration in mastering academic English contributes to the dropout rate in some communities. The Board must be diligent in learning from research regarding best practices from around the nation and the world and must be rigorous in learning from the work going on in our own high performing districts and schools. With an understanding of the variety of things "that work" the Board must be willing, in the first instance to grant waivers necessary to allowing schools and districts to adopt best practices and, eventually, to build these practices into the basic policy framework for the State.

As a basic step, the Board needs to encourage schools and districts need to continue to focus on targeted, individual interventions and instruction for struggling students, with remediation through before and after school programs. And we should not imagine that all English learners are kindergarteners or first graders. We ought to provide separate intervention programs for those students in the upper grades who are struggling to learn English and who, as a result, lag behind their grade-level peers in content mastery so that these students develop a command of the language content as quickly as possible. And we should continue to seek ways to improve teacher knowledge across the state to address the complexity of needs of English learners.

State Board of Education Committee

January 1, 2007

Appointments

## Goals and Responsibilities

1. *What were your most significant accomplishments during your first term as a member of the State Board of Education? What do you hope to accomplish during your second term? How will you measure your success?*

One accomplishment of which I am proud was the adoption of the Career Technical Education Standards. So many youth that are not necessarily college-bound now have a framework from which to gain valuable skills and knowledge towards a fulfilling life.

The History Social Science adoption has also been fruitful. We now have more options of texts and materials from which districts can choose.

The reading and language arts adoption for next year is also very exciting. School districts will have many programs from which to choose! In the last adoption cycle there were only two choices, which led to great frustration. For the 2008 reading adoption cycle there was a great deal of effort that went into our being more explicit with publishers about what California's needs are, and they responded. We have additional supports for English Language Learners, teachers and administrators.

2. *How do you reach out to various education stakeholder groups? What have you done to improve communication and collaboration between the Board and the Legislature, education organizations, and parents and other advocates on significant education policy issues?*

As a general matter, the Board's executive office is in constant communication with various stakeholder groups on the Board's behalf. They meet frequently on matters that come before the Board. Personally, I also



meet with individuals from interested education stakeholder groups on issues that fall under the Board's purview.

We, as a Board and as individuals, need to be mindful to continue to improve relations with the Legislature, parents and other education stakeholders. One way we've attempted to build bridges lately is to involve legislative members and staff more actively in the Board's activities in which they have expressed interest. For example, both Assemblyman Mullin and Senator Wyland have expressed recent interest in matters of curriculum and instruction. We've sought to more directly involve Mr. Mullin on the Board's curriculum commission and have reached out to Senator Wyland's office to ensure that he is informed about the matters in which he has expressed interest. This past year, we also invited Senator Steinberg to present to the Board on the matter of student dropouts. And Assemblyman Dymally presented to the Board regarding a charter school matter in Compton. As a Board member, it will be a priority of mine to continue to seek ways to engage the legislature and individual legislators in policy areas of interest to them.

With respect to parents and other education stakeholders, we have recently re-activated and elevated in importance a number of our committees and commissions that make recommendations to the Board. These are important avenues for direct involvement by parents, teachers, administrators, and other education experts to provide direct input to the Board on matters of their expertise. As examples, we have committees for curriculum and instructional materials, child nutrition, special education, No Child Left Behind, charter schools, and we're in the process of re-activating a committee on English learner matters. These are important avenues to provide direct and in-depth involvement by local educators and parents into the matters before the Board.

3. *As a Board member, what training have you received regarding conflicts of interest? From whom do you seek advice on potential conflicts?*

The Board staff and legal counsel, in conjunction with the California Department of Education's legal counsel, provide us with advice on both an individual and collective basis regarding conflicts of interest. For each Board meeting, staff analyzes our financial, employment, personal and other relationships and advises us on the appropriateness of participating in specific matters before the Board. This advice is generally given with a view that a more cautious and conservative approach is the most prudent course of action. Consequently, we recuse ourselves on a routine basis regarding matters before the Board.

*Given that you are the founder and co-director of a charter school, when, if ever, do you believe it is appropriate to recuse yourself from voting on a charter school item pending before the Board? Have you ever done so? Specifically, when the Board approved regulations on the use of district facilities for charter schools under Proposition 39, how did you determine whether or not you had a conflict of interest?*

Yes, I have recused myself from charter voting on charter school matters before the Board and I believe it is periodically appropriate to do so, and counsel has advised me of others where a perceived conflict was an issue. Specifically, I have always done so when the outcome would directly impact my charter organization. For me, this applies to charter school matters and also to matters involving Los Angeles Unified School District that may have a benefit to my charter school as a result of our location in Los Angeles. For example, I've recused myself from a vote on bond funding in Los Angeles and have recused myself from voting on approval of general funding applications for The Accelerated Schools.

As mentioned in the previous question, the Board staff and legal counsel analyze each matter before the Board for each Board member to determine if a conflict exists. The matter of Proposition 39 was treated similarly. As a general principle, for both employees of school districts and charter schools, individual Board members are not asked to recuse themselves from matters that have a general impact on the institutions of school districts or charter schools. Matters are analyzed for their direct impact on an individual basis.

## The Achievement Gap

4. *Current K-12 education is criticized for putting too much pressure on schools to "teach to the test," referring to achievement tests. How do you, as a Board member, evaluate California's testing policy and take steps to modify it, if necessary? How do you balance the need to measure achievement against the danger of test results over-emphasis crowding out other objectives?*

I do not believe that this is most significantly a testing issue. Instead, I believe the issue of teaching to the test, could be best remedied by further teacher professional development to assist teachers in covering the state-adopted content for a given grade-level and subject area without sacrificing the other critical aspects of teaching that make for successful teaching practice. Those include, for example, helping educators maintain and use their creativity in the classroom, and helping students focus on other skills such as critical thinking and problem solving in addition to content.

With specific reference to the testing program, as a Board we are very sensitive to the volume of the tests and the impact they have on local educators as a result of their use in our accountability system. Initially, we need to continue to focus on ways to keep testing time and volume at a level that will accomplish the purpose of giving us a health check on the system, but also will not detract overly much time from classroom instruction. Secondly, we need to continue to seek more effective ways to convey to the public the purpose of these statewide tests. In large part, the statewide testing program is predominantly intended to be a macro measure of school, school district, and statewide performance, and not one exact indicator of individual student performance. The over-emphasis on testing and the notion of teaching to the test, can both be ameliorated by better statewide



communication about the purpose and role of our statewide tests in the educational system. This should be coupled with an awareness of overall annual testing time and the goal of keeping statewide testing time to the minimum needed to fulfill its desired purpose.

5. *In addition to increasing the API growth targets for subgroups, has the Board taken other actions to help narrow the achievement gap?*

Yes, the Board has taken several steps to help narrow the achievement gap. First, the Board has focused on the development of curriculum and instructional materials that meet the targeted needs of specific student subgroups. One example of this is the built-in intervention programs in the mathematics instructional materials adoption from November 2007 targeted to assist students struggling with mastery of mathematics content. Another example of this is the specific focus on unique programs for struggling readers, English Language Learners and students unaccustomed to traditional English vernacular within the Reading Language Arts programs that will be adopted by the Board next year.

In addition to the curriculum and instructional programs, another policy approach the Board has taken recently is to focus on remediation and additional instructional support and intervention. The Board has successfully defended a number of lawsuits recently that challenged the validity of the testing programs, by focusing on the underlying instructional and programmatic problems instead of the tests, which are a symptom. The Board, with the help of the legislature, has focused on remediating students educational needs, for English learners, students with disabilities, and those struggling to pass the high school exit exam, instead of changing the tests, which are simply emblems of our need to continue to focus on educational improvement for our significant subgroups.

6. *How do you respond to the criticism that current test scores are not a true reflection of achievement in California because the lowest performing students have already dropped out and are not being tested?*

The student dropout rate in California is an unacceptable problem. The Board recently held a mini-seminar specifically focusing on the dropout issue, which included Senator Steinberg and who presented to the Board regarding some of his research and policy work on student dropouts. Student drop-outs should be an on-going issue of concern for the Board.

It is correct that the testing system is meant to measure the performance of only those students currently participating in the system. To account for this limitation, a well-designed accountability system will include not only test results as the barometer of student performance, it will also include other measures to account for the students who should be included in the system in addition to those who are included. The matter of drop-outs is meant to be accounted for in California schools and school districts through the use of a

graduation rate requirement, in addition to annual test results. One current problem with the use of a graduation rate is the limitation placed on our system by the lack of a comprehensive statewide data system. Once we have such a system in place, tracking student mobility and accounting for student drop-outs will be easier.

A second element of a well-designed accountability system that helps to ensure that all students are included, not only the higher performing students, is the use of a participation rate requirement. Coupled with a graduation rate requirement, a participation rate requirement helps to provide a better measure of the school or school district's performance for all of its students because it provides an incentive to test all students.

7. *The Board recently raised growth targets so that specific subgroups of students, including those with the highest dropout rates, will be expected to improve their performance. Given that the dropout rate in urban districts is estimated between 50 to 70 percent, how do you determine when or if the targets you are raising are increasing or decreasing the number of dropouts? What has the Board done to address this problem?*

It is unclear how the increase in a school district's accountability target would result in individual students' decisions to drop out or remain in school. This argument has been raised, and is worth considering, with regard to the requirement for passing the high school exit exam in order for the student to graduate high school. This is a requirement whose consequence is directly felt by the student. However, the subgroup target increases are meant to apply to schools and school districts at the macro level, and their impact should be transparent to the individual student.

It is our expectation that the increase will require school districts to focus more keenly on the performance of those subgroups, thereby devoting additional attention and resources to the performance of those subgroups. While it is too early to know if this change is having that desired result, it bears further study over the coming years' testing cycles.

8. *Recent adequacy studies note that poverty is the biggest indicator in student achievement. Do you believe the Board should look beyond the school to other factors such as health care, hunger, foster care, etc., in an effort to narrow the achievement gap? Has this finding impacted what the Board is doing to close the achievement gap in the state? How?*

The state should devote time and energy to look more broadly at the sociological factors that may impact student performance. It is unclear exactly how great an impact the factors mentioned above have on student achievement, but we know that these challenges present problems for socio-economically disadvantaged students that merit attention. The Board's scope of inquiry is somewhat defined within constitutional and legislative boundaries limited to K-12 education. The Board does have partial responsibility for student meals programs and child nutrition, which are important pre-conditions to student learning. The Board would be willing and interested in devoting further effort to work with the Legislature and the Governor's



administration to examine these sociological factors.

### **No Child Left Behind**

9. *Schools that do not make their growth targets for two consecutive years are designated program improvement schools. Approximately 100 of our poorest districts are facing corrective action under the requirements of NCLB. How does the Board plan to address the needs of those districts?*

The Board faces the challenging responsibility to ensure that the state's public schools are making progress in student academic achievement while balancing this with the school districts' need for flexibility and local control. The Board will examine the challenges faced by each of the ninety-nine school districts on an individual school district basis, but will look to develop solutions that are sustainable over time. Any solution must focus on capacity building and technical assistance at the individual school district level, coupled with consequences to ensure that accountability for student performance is treated with the gravity it deserves. The solution that is developed should be executed with an eye toward helping school districts build a culture of success that is sustainable over the long term such that the state does not continue to expend its educational resources on temporary improvements.

10. *What can the Board do to keep schools out of corrective action?*

The most effective ways to keep schools and school districts out of program improvement are described in the answer above – technical assistance and capacity building. The Board, in conjunction with the California Department of Education, has spent two years piloting a district assistance and intervention model that provides in-depth analysis and support for school districts facing academic challenges. The teams deployed under this model diagnose the school district's primary academic challenges and the underlying causes of those challenges and then seek to provide the assistance necessary to eliminate the challenges in the short-term and develop a culture of success for the long term. The Board should continue to promote this effort and the early successes it has seen.

### **California High School Exit Exam**

11. *There has been extensive discussion on options for students with disabilities who are unable to pass the exit exam. The Board has previously proposed streamlining the exam waiver process at the local level as an option. What course of action would you recommend?*

The Board, through its staff, the CDE staff, and various contractors, has spent significant time and energy researching and studying this matter. The solution proposed by the Board in the spring was an effort to reach a measured proposal that would simultaneously recognizes that students with disabilities

face unique challenges but also places our public education system's focus on making our best efforts at ensuring that students with disabilities are given every possible opportunity to learn the material and demonstrate their mastery.

Our research to date shows that the high school exit exam is not the primary impediment to graduation students with disabilities. The significant majority of students with disabilities who do not pass the exit exam are also unable to meet their other high school graduation requirements. It bears further study, and the Board hopes to study further this year, whether the exit exam as currently administered is the best indicator of performance for students with disabilities.

12. *California spends millions remediating students that fail the high school exit exam. The test is at 8<sup>th</sup> and 10<sup>th</sup> grade levels of proficiency. What is the Board doing to improve first-time pass rates?*

The Board's primary focus to date has been on remediation for students who did not pass the exit exam during their first administrations or by the time they've reached their senior year. The exit exam first had graduation consequences for students in the class of 2006. The Board's initial concern was to help those students at risk of not graduating because of the exit exam obtain the skills they needed to demonstrate to pass the exit exam.

Concurrently, the Board has been developing instructional programs and materials in Reading Language Arts and mathematics with specific interventions and remediations built in for students who have fallen behind. In addition to this work, the Board should focus further analysis in the future of students failing to pass the exit exam and early warning signs of failure, such as difficulty with algebraic concepts for example. Such study will help the Board provide targeted support for school districts to use sufficiently early in a student's schooling to help keep him or her on track to gain the content knowledge and skills needed to pass the exit exam and to be successful following high school.

## English Learners

13. *Concerns have been raised that the state's Reading Language Arts and English Language Development framework is not designed in a manner to ensure that a student will achieve sufficient proficiency in English to meet academic standards and pass the California High School Exit Exam. How do you respond to this criticism? What, if any, changes would you recommend to ensure each student has the instructional materials necessary to attain reading and English proficiency?*

This criticism is unfounded. California has a cohesive system of content, frameworks and instructional materials, and assessments. The framework is built upon the academic content standards, and the exit exam is also tied directly to those same content standards. Students are tested on the content via the exit exam that they are being taught through the use of the frameworks and instructional materials.



With that basic structure in mind, however, there is always room for improvement. The current instructional materials were adopted during the state's initial Reading Language Arts adoption and have been in use since in 2002. We have learned much since then, and the Board is in the midst of an adoption that will provide additional programmatic components that focus additional materials specifically on the needs of English Learners, struggling readers, and other students who need intervention and remedial assistance. These features of the new framework will be bolstered by a substantial increase in the number of quality instructional programs available for school districts following this adoption upcoming in November 2008.

The changes that I would make are not directed at the instructional materials. There will always be limits on the potential impact of instructional materials on student performance. We should be focusing more efforts on professional development to ensure that teachers are equipped to make full use of the instructional materials in the increasingly complex classroom environments that they face. Teachers should be given the tools to differentiate instruction to help address the needs of students at various levels of mastery of the subject matter. We are making improvements in this area with the Board's recent completion of regulations to improve the state's math and reading professional development programs by adding a specific English Learner component. We are in the process of reviewing training providers and materials that will ultimately be qualified to meet this need. We also must promote the pre and re-teaching elements of the new Reading Language Arts framework to ensure that struggling students, including English learners, are receiving the additional individualized support they need to master the content.

14. *Should the Board take any actions specific to English learners in an effort to narrow their achievement gap?*

Yes. Some of the specific efforts the Board is currently taking have been described in the previous question. The Board should also help school districts build the local capacity to address the needs of English learners in other ways. The data regarding the ninety-nine school districts described in an earlier question, demonstrates that Reading Language Arts mastery for English learners and students with disabilities are two of the state's biggest challenges. We have learned a lot about what is effective within the past few years. We need to continue to focus on targeted, individual interventions and instruction for these students, with remediation through before and after school programs. We should provide additional intervention programs for those students in the upper grades who are significantly behind their grade-level peers so that these students develop a command of the language content as quickly as possible. And we should continue to seek ways to improve teacher acumen across the state to address the complexity of needs of English learners and students with disabilities in the traditional school classroom.



Kenneth J. Williams

To: Nettie Sabelhaus  
Rules Committee Appointments Director

From: Kenneth J. Williams  
Stateboard Member, Barbering & Cosmetology

Re: Responses to your letter dated November 28<sup>th</sup> 2007.

Thank you for the above dated letter. As per your request, here are my responses to your questions as well as an updated form 700, statement of economic interest.

I must first say that it is an unfortunate to know that this Board will sunset and leave 400,000 licensees without a clear strong voice. This Board had begun to implement a many great changes after many years of confusion and stagnation, and without a sunset review hearing.

It is my hope and prayer that this Board **does not** sunset, and will continue its unbelievable fine work, which would be a great benefit to the board's licensees as well as the consumers of services in the State of California.

As an owner of a school that has trained students in this field for 79 years, I have a vested interest in the way our stateboard operates. Please consider trying to do what you can to protect the great progress this board as made.

I'm at your disposal in anyway to assist in bringing to light any additional information that your office could use to justify the need for this Board. You can call me at 323-270-6141.

Sincerely,



Kenneth J. Williams

Board Member

V.P. Universal College of Beauty Inc.

Senate Rules Committee

DEC 4 2007

Appointments

## Goals

***What are your goals as member of the Board of Barbering and Cosmetology? What do you hope to accomplish? How should we measure your success?***

I have many goals as a Board Member.

1. To help protect consumers from service providers that are uneducated and under trained as to the harm the can do, while also promoting work that can done safely without overly burdensome requirements of our State.
2. To reduce the amount of underground activity this industry fosters through unbalanced dissemination of knowledge. I believe we can do a better job in training licensees on to how to "be compliant and stay compliant" with all the state requirements of a practitioner.
3. The Beauty Industry has seen enormous growth in the last 20 years. New cosmetic services come to the market almost weekly in this field! Part of my mission is the help educate so that there are fewer accidents and more consumer protection in our field.
4. Bring balance and parody to Enforcement.
5. Help bring financial respect to the industry. In a lot of ways Licensees have been over regulated and under regulated. I would like to see this corrected.

***2. Have you received any training from the Department of Consumer Affairs to prepare you for your responsibilities? Have you received any ethics and conflict of interest training?***

Yes. I received training given by D.C.A on March 14<sup>th</sup> 2007 in San Diego CA.

## **Board Structure**

### ***3. How is the Board planning for its scheduled sunset?***

The board plans on becoming an advisory board to the then instituted Bureau of Barbering and Cosmetology. This will hopefully be positive transition, however I have concerns due to that fact the state no longer has the Bureau for Private Post-Secondary Education which administrated and protected student's interests in our State. I presumed that part of B.P.PV.E. responsibilities would be assumed by our board. Now with the board due to sunset, there will be many unanswered questions.

## **Enforcement Issues**

### ***4. Currently Licensee's are inspected every five to seven years. Does the Board have a plan for more frequent visits?***

Yes. Because of the more proactive inspections techniques more salons will be visited because inspections will take less time.

### ***5. Is the program on track to operational by Jan 1, 2008, which is the board's stated goal?***

Yes. The program is on track with January 1, start date.

### ***6. Has the Board's new enforcements efforts involving surprise visits proven to be successful? What are the plans for this kind of enforcement in the future?***

All Visits are surprise visits.

***7. How will you ensure that the Board's statutory mission of public protection is not overlooked with the Board's emphasis on education of the Licensees? How is the Board helping to educate licensee to facilitate compliance?***

This board has increased penalties for non-compliance of board rules and regulations on almost all citations.

The Industry is now more aware that the board is serious about protecting public health and safety.

Now with the inspectors more able to refresh a licensee's knowledge, this will help foster a higher respect level for our laws, thus preventing some consumer harm.

***8. How long does it take for the Board to process consumer complaints or licensee approvals or renewals? Is there a backlog? If so what is the estimate of backlogged cases, and what actions are underway to clear up the backlogs?***

- The Board does not have a backlog in any area.
- Complaint processing is less than 10 days
- Renewal processing is less than 2 weeks
- Application processing is approximately 4 weeks
- Prior to this Board the backlogs were over 8 months long.

***9. Has the board been subject to a departmental audit? If so what were the results?***

- Yes, the Board was audited in June 2006 and is currently going through the 360-day follow-up.
- The Board's executive officer will forward the audit package as soon as it is completed.



## **Booth Rental**

***10. In addition to a legislative Approach, is the board coordinating with the Employment Development Department to ensure the proper classification of salon professionals?***

- The Board has worked with EDD in the past and is planning to renew this relationship in hopes to better educate licensees.

## **Testing in Prisons**

***11. In its report to the Legislature in September 2007 on the issue, the board concluded that current laws, regulation, and policies do not create a barrier to licensure. Does the board plan on expanding its program of testing in prisons?***

- The Board has conducted two exams in State Correctional Facilities.
- A third exam is planned for the beginning of 2008.
- The Board is working with the California Department of Corrections and Rehabilitation in the scheduling and administration of the exams.
- The Board is also working with the CDC to look at expanding this program to other license types (right now its only cosmo).

***12. Does the board have enough instructors and examiners available to support the amount of inmate interest in its licensing program? Is the passage rate similar to individuals taking the exam outside correctional facilities?***

- The Board has been able to absorb the workload that is involved with conducting the examinations.

A total of 14 exams have been administered with a 50% pass rate. The pass rate for outside applicants is approximately 80%







**578-R**

Additional copies of this publication may be purchased for \$5.25 per copy  
(includes shipping and handling) **plus current California sales tax.**

**Senate Publications & Flags**

1020 N Street, Room B-53

Sacramento, CA 95814

(916) 651-1538

Make checks or money orders payable to **SENATE RULES COMMITTEE.**

**Credit cards not accepted.**

Please include stock number 578-R when ordering.

2

HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



DOCUMENTS DEPT.

APR 2 1 7 08

SAN FRANCISCO  
PUBLIC LIBRARY

STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 16, 2008  
1:34 P.M.





1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

3  
4  
5  
6 HEARING

7  
8  
9  
10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

13  
14  
15 WEDNESDAY, JANUARY 16, 2008

16 1:34 P.M.

17  
18  
19  
20  
21  
22  
23  
24 Reported by:

25  
26 Evelyn J. Mizak  
27 Shorthand Reporter  
28



APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

DEBBIE L. ENDSLEY, Deputy Director  
Department of Personnel Administration

RICHARD S. COSTIGAN III, Member  
State Personnel Board

EDWARD G. PRIETO, Member  
Corrections Standards Authority

ASSEMBLY MEMBER LOIS WOLK

LINDA M. PENNER, Member  
Corrections Standards Authority

TRAVIS F. TOWNSY, Member  
Corrections Standards Authority





1 ASKIA M. ABDULMAJEED, Member  
2 Board of Parole Hearings  
3 Division of Juvenile Justice

4 CHRIS BROWN  
5 Association of Black Correctional Workers

6 RON GIVENS, Executive Director  
7 Associated Chaplains in California State Service

8 DONALD MILLER, M.D., J.D.  
9 Consultant, Corrections & Parole Law

10 ALVIN S. KUBOCHI, Member  
11 Board of Parole Hearings  
12 Adult Division

13 MICHAEL F. PRIZMICH, Member  
14 Board of Parole Hearings  
15 Adult Division

16 STEWART KATZ  
17 Private Attorney

18 RICH PFEIFFER  
19 Private Attorney

20 KEITH WATTLEY, Managing Attorney  
21 UnCommon Law  
22  
23  
24  
25  
26  
27  
28



## INDEX

	<u>Page</u>
Proceedings .....	1
<u>Governor's Appointees:</u>	
DEBBIE L. ENDSLEY, Deputy Director Department of Personnel Administration .....	1
Opening Statement .....	1
Questions by SENATOR PADILLA re:	
Addressing Challenge of Projected Shortfall in Skilled Workers .....	3
Response from Various Departments .....	4
Experience of Counterparts in Local and Federal Governments .....	4
Modernization of Civil Service System .....	5
Ability to Continue Plans with Limited Resources Due to Budget Cuts .....	6
Ability Compete with Private Sector Employment Practices .....	6
Questions by CHAIRMAN PERATA re:	
Dealing with Compaction Issues .....	8
Motion to Confirm .....	10
Committee Action .....	10
RICHARD COSTIGAN, III, Member State Personnel Board .....	10
Opening Statement .....	11
Questions by CHAIRMAN PERATA re:	
Cost Analysis for Outsourcing .....	12





Questions by SENATOR PADILLA re:

Oversight and Accountability for Succession Planning in Departments and Agencies .....	14
Accountability for Department Heads Who Do Not Have Succession Plans .....	16
Innovative Recruitment .....	17
Experience of Other Governmental Entities .....	19

Question by CHAIRMAN PERATA re:

Length of Term .....	20
Motion to Confirm .....	21
Committee Action .....	22

Taken Together:

EDWARD G. PRIETO, Member Corrections Standards Authority .....	22
---	----

Introduction and Support by ASSEMBLY MEMBER LOIS WOLK .....	22
--	----

Opening Statement .....	24
-------------------------	----

LINDA M. PENNER, Member Corrections Standards Authority .....	25
--	----

Opening Statement .....	25
-------------------------	----

TRAVIS F. TOWNSY, Member Corrections Standards Authority .....	27
---	----

Opening Statement .....	27
-------------------------	----

Questions by CHAIRMAN PERATA re:

Initial RFP to Implement AB 900 Did Not Reflect Funding Priority for Reentry Facilities .....	29
---	----



1	Lack of Advocates on Juvenile	
2	Justice Steering Committee .....	36
3	Questions by SENATOR PADILLA re:	
4	Access and Presence of Cell Phones in	
5	Prisons .....	38
6	High Turnover Ratio in Prison Medical	
7	Staffing with Receivership .....	41
8	Future Discussions about Cell Phones .....	42
9	Questions by SENATOR DUTTON re:	
10	Oversight Provisions regarding	
11	Implementation of AB 900 .....	42
12	Status Report .....	43
13	Need for Periodic Updates .....	44
14	Statements by CHAIRMAN PERATA re:	
15	Reason for Committee Requesting	
16	Presence of Appointees .....	45
17	Problems with Corrections .....	45
18	Not Impressed with Staff .....	46
19	Personal Attacks by CCPOA .....	46
20	Motion to Confirm All Three Appointees .....	47
21	Committee Action .....	48
22	ASKIA M. ABDULMAJEED, Member	
23	Board of Parole Hearings	
24	Juvenile Division ... ..	48
25	Opening Statement .....	48
26	Questions by SENATOR DUTTON re:	
27	Surveys to Determine Success of	
28	Parolees .....	52





Questions by SENATOR PADILLA re:

Preparation Time for Hearings, Completeness  
of Information Provided, and Workload..... 54

Availability of Programs for Wards..... 55

Questions by SENATOR ASHBURN re:

Methodology Used to Determine  
Likelihood of Successful Parole..... 57

Personal Certainty in Decisions  
Made to Grant or Deny Parole..... 59

Witnesses in Support:

CHRIS BROWN, Legislative Liaison  
Association of Black Correctional Workers..... 60

RON GIVENS, Executive Director  
Associated Chaplains in California State Service..... 60

DONALD MILLER, M.D., J.D.  
Consultant, Corrections & Parole Law..... 61

Motion to Confirm..... 63

Committee Action..... 64

Taken Together:

MICHAEL F. PRIZMICH, Member  
Board of Parole Hearings  
Adult Division..... 64

Opening Statement..... 64

ALVIN S. KUBOCHI, Member  
Board of Parole Hearings  
Adult Division..... 65

Opening Statement..... 65

Questions by CHAIRMAN PERATA re:

Large Number of Postponements..... 66



1	Reasons for Postponements .....	67
2	Questions of MR. KUBOCHI by CHAIRMAN PERATA re:	
3	Conflict of Interest Due to Mother-Daughter	
4	Relationship between Deputy Commissioner and	
	Deputy Attorney General .....	69
5	Ruling on Request to Restart Hearing	
6	Where Recording Device Had Not Been	
7	Working .....	70
8	Questions by SENATOR PADILLA re:	
9	Logistics of Performing Job and	
	Workload Concerns .....	72
10	Possibility of Compromising Integrity of	
11	Hearing because of Heavy Workload,	
12	Time Issues, and Physical Demand .....	74
13	Unfairness of Postponements .....	74
14	How Can Legislature Help Board Perform to	
	Best of Ability .....	75
15	Ability to Continue to Do Job with Less	
16	Resources .....	76
17	Request for Future Input .....	76
18	Questions of MR. KUBOCHI by SENATOR ASHBURN re:	
19	Letter Containing Serious Allegations .....	77
20	Allegation of Offensive Behavior .....	77
21	Denial of Opportunity for Questions and	
22	Answers .....	78
23	Efforts to Reach Board's Legal Counsel for	
24	Advice in Hearing with Unrecorded	
25	Testimony .....	79
26	Past Board Action Undertaken When Board	
27	Counsel and Executive Officer Were Not	
	Present .....	80
28		



1	Current Arrangement Where CDCR Loans	
2	Counsel Is Untenable .....	81
3	Need to Separate Board from CDCR .....	81
4	Confidence in Personal Professional	
5	Behavior at Hearings .....	81
6	Questions of MR. KUBOCHI by SENATOR PADILLA re:	
7	Affidavit from CHERYL MONTGOMERY .....	82
8	Federal Court Order to Set Parole Date .....	82
9	Duties and Obligations with Respect to	
10	Federal Court Orders .....	83
11	<u>Witness in Support of MR. KUBOCHI:</u>	
12	STEWART KATZ	
13	Private Practice Attorney .....	85
14	<u>Witness in Opposition to MR. KUBOCHI:</u>	
15	RICH PFEIFFER	
16	Attorney on <u>Willis</u> Case .....	87
17	<u>Witnesses in Opposition to Both Appointees:</u>	
18	DONALD MILLER, M.D., J.D.	
19	Consultant, Corrections & Parole Law .....	93
20	Questions by SENATOR CEDILLO re:	
21	Statutory Requirement of Diversity .....	95
22	KEITH WATTLEY, Managing Attorney	
23	UnCommon Law . ....	98
24	Committee Discussion .....	103
25	Motion to Confirm MR. KUBOCHI .....	104
26	Statements by CHAIRMAN PERATA re:	
27	Share Frustration of Opposition .....	103
28	Postponements Waste of Money .....	104





1	Lack of Diversity on Board .....	104
2	Decision Not to Hear Future	
3	Appointments until Change Is Made .....	106
4	Inability to Support Current	
5	Appointment .....	106
6	Statements by SENATOR CEDILLO re:	
7	Concurrence with Pro Tem's	
8	Statements regarding Board's	
9	Lack of Diversity .....	107
10	Not Prepared to Vote .....	108
11	Statements by SENATOR ASHBURN re:	
12	Concern that Committee Will No	
13	Longer Consider Appointments to	
14	Board .....	109
15	Decision Disadvantages Inmates .....	109
16	Disagreement with Chair's Decision .....	110
17	Committee Action on MR. KUBOCHI .....	110
18	Motion to Confirm MR. PRIZMICH .....	110
19	Committee Action on MR. PRIZMICH .....	110
20	Termination of Proceedings .....	111
21	Certificate of Reporter .....	112
22	APPENDIX: Written Responses to Committee Questions	
23	By Appointees, as well as Written	
24	Statements by Appointees Not Required to	
25	Appear: .....	113



P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: The Senate Rules Committee, part of us, will convene. Call the roll, please.

Why are all you people here? It must be for Richard Costigan. You're going to have to wait. Debbie Endsley, we'll take the first shot at her.

Debbie, come on up. Welcome.

MS. ENDSLEY: Thank you.

CHAIRMAN PERATA: It's not going to be bad. Just relax.

Would you like to introduce yourself?

MS. ENDSLEY: Thank you very much.

I'm Debbie Endsley. I'm currently the Chief Deputy Director of the Department of Personnel Administration.

CHAIRMAN PERATA: Would you like to say anything else?

MS. ENDSLEY: Sure. I have a very short prepared statement.

CHAIRMAN PERATA: We'd love to hear it.

MS. ENDSLEY: Good afternoon, Senators. Thank you for this opportunity.

I've worked for the State of California for just over 31 years. During my career, I've had the advantage of working for many agencies. I'm grateful for these experiences because they have been what led me here today. My background includes budgets, personnel, health and retirement policy, benefit design, contracting, and program implementation.

1                   Many years ago as a personnel analyst, I saw what  
2 was wrong with our system and what didn't work. I saw the  
3 frustrations of not being able to hire the right person for the  
4 right job, not being able to properly assess performance,  
5 compensate them properly, nor pay them for the value of the role  
6 that they played. Little did I know that some 20 years later I  
7 would be responsible for helping to change the state's HR  
8 system.

9                   While many of you are aware of the collective  
10 bargaining duties of the Department, DPA also administers a  
11 number of other programs related to the state's HR needs. These  
12 other programs are the assigned areas of my responsibility. I'd  
13 like to briefly tell you about them.

14                  We administer a total of 23 benefit programs for  
15 state employees and annuitants. Funding for these programs is  
16 both employer and employee paid. We're currently working with  
17 our Benefits Division to illustrate the value of benefits in  
18 perspective to total compensation. During these lean times,  
19 this is very important to us.

20                  We're also working in our classification and pay  
21 area to add technology to that area and better serve Department  
22 needs. HR modernization is by far the most important task that  
23 I'm responsible for. DPA has partnered with the State Personnel  
24 Board and the Department of Finance to accomplish this work.  
25 During the past five months since we've achieved funding for  
26 this program, we have hired five executive level staff, and we  
27 are nearing completion with our partner, the State Personnel  
28 Board, to acquire a new online testing system to get people into



1 the system very quickly.

2 We're also starting the initial process to  
3 abolish a thousand classifications from our system that are  
4 currently unused. I must stress the importance of who we're  
5 working with on this project. We're working with both  
6 employees, employee groups, and other constituents.

7 I'd like to talk just second also about workforce  
8 planning. Director Gill participated in a hearing on community  
9 college student transfer rates put on by you, Senator Padilla,  
10 in November. At this hearing we heard about the upcoming  
11 shortfall in number of skilled workers in California. We're  
12 also looking forward to participating in a conference with  
13 Senators Perata and Ashburn in February to create awareness of  
14 the director-level of the need for workforce planning in the  
15 immediate future. Beyond that, in April we will be conducting a  
16 conference, partnering again with the State Personnel Board and  
17 State and Consumer Services Agency, in order to rapidly teach  
18 departments the hands-on training for workforce planning that  
19 they need so desperately.

20 I'm very honored to be a public servant, and I  
21 now look forward to any questions.

22 CHAIRMAN PERATA: Thank you.

23 Senator Padilla.

24 SENATOR PADILLA: I appreciate the recognition of  
25 the Select Committee hearing that we had in the off season. But  
26 given the challenge that we focused on that day, given the  
27 challenge that you just described, what are we doing about it?

28 MS. ENDSLEY: Well, the first thing is the

1 conference in April. Beyond that, though, and also  
2 concurrently, one of the things that we are working on is a tool  
3 box for state departments to use. That tool box will actually  
4 walk them through workforce planning and teach them how to do it  
5 online so that they can get their results, look at their gap  
6 analysis, and better determine how to fit their needs.

7 SENATOR PADILLA: What sort of response are you  
8 getting from the numerous departments out there? Do you have  
9 some good examples and some bad examples of folks who are  
10 cooperating, folks who are on the ball, and those who, for  
11 whatever reason, are struggling to meet the task?

12 MS. ENDSLEY: We do. Approximately -- we just  
13 did a survey just in this last couple months. And about -- I  
14 would say it's about 50-50 split of departments that are at  
15 least in process or have completed their workforce planning and  
16 succession planning. And there are about 50 percent of the  
17 departments that are either struggling, haven't started, or  
18 maybe don't even acknowledge the need.

19 SENATOR PADILLA: Is this something you need at  
20 state government? I imagine you'd talk to your counterparts in  
21 local government, maybe even the federal government. What are  
22 they experiencing?

23 MS. ENDSLEY: You know, I don't have good  
24 statistics in that area. I do know that yes, we are talking  
25 with them. We're trying to learn what are the best tools, how  
26 are they going about it, what are some of the novel experiences  
27 that we can use in state government.

28 But I'm afraid I don't have a handle on where

1 other private entities or the federal government are.

2 SENATOR PADILLA: Nobody here is a stranger to a  
3 system in place called the civil service system.

4 MS. ENDSLEY: Correct.

5 SENATOR PADILLA: That's been a long time in its  
6 growth and evolution.

7 What respect do we give to the civil service  
8 system that's in place, and what thoughts or recommendations are  
9 there in place to modernize it?

10 MS. ENDSLEY: Well, again, the biggest thing that  
11 we're working on is HR modernization. That will take everything  
12 into account, all the way from the recruitment and selection  
13 system, all the way to the performance assessment system.

14 The biggest reason that our system doesn't work  
15 in our opinion after the research that we've done is that we're  
16 an old duties-based system. It's extremely complex. It's very  
17 difficult for even our experts to determine how to work within  
18 the system, no less the person who's coming to us to attempt to  
19 get a job with us.

20 So, what we're doing is, we're streamlining that  
21 system and building it on competencies, which are much easier  
22 for the normal person to go in and determine whether or not they  
23 meet the needs of a job.

24 SENATOR PADILLA: And just two more questions,  
25 Mr. Chair.

26 One is, how do we do all that with the news of  
27 the week being the budget and at least an initial starting point  
28 of 10 percent cuts across the board? You have quite a challenge

1 before you and limited resources to do that, maybe less  
2 resources to do that in the near future. What plans do you have  
3 in place to be able to still get the job done?

4 MS. ENDSLEY: Well, Senator, so far we have been  
5 extremely fortunate. We do have five executive level positions  
6 that have not been cut. Those will remain. To date, we have  
7 been asking departments to literally pony up staff and loan them  
8 to us to help with the project. To date, I can report that  
9 we've received very favorable consideration. We have 14 loaned  
10 positions at this time. And at the time that we need more, we  
11 will look for more.

12 The other thing I want to say is, a lot of the  
13 people in the room that you see behind me are extremely  
14 dedicated civil service employees. They are rank and file, and  
15 they're the people that I see there late at night and on the  
16 weekends that don't have to be, and they will get the job done.

17 SENATOR PADILLA: And the last piece, obviously  
18 when we're competing for a workforce, we're not just competing  
19 with public sector opportunities elsewhere, but we're competing  
20 with the private sector. And the experience of applying for a  
21 job, preparing for a job, staying in a job, competing for a job  
22 in the private sector seems to be not only different than the  
23 public sector, but changing even more quickly than we are.

24 So, how are we keeping up with that dynamic  
25 specifically?

26 MS. ENDSLEY: Right now I can tell you we're not  
27 keeping up. I wouldn't say we are keeping up.

28 SENATOR PADILLA: Start with the application



1 process.

2 MS. ENDSLEY: Yeah, yeah. We're -- we are  
3 changing very rapidly in order to keep up. Some of the things  
4 that we're looking at, first of all, the online system that I  
5 told you about. You've got to get them in.

6 But secondly, we have to make the State of  
7 California an employer of choice, not just in those words but  
8 truly a place that people want to come to work, whether it be  
9 because they want to perform a civic duty, whether it be because  
10 we have extended flexible schedules and recreated the way that  
11 we do perform our work. Those are some of the things that we  
12 have to look at right now if we are going to remain competitive  
13 in the workforce.

14 SENATOR PADILLA: Okay, thank you.

15 CHAIRMAN PERATA: That explained who all these  
16 people are.

17 [Laughter.]

18 CHAIRMAN PERATA: I admire that. I really do.

19 We've spent a couple years now talking about  
20 compaction. And now that I've learned what it means, I like to  
21 use it as often as possible.

22 [Laughter.]

23 CHAIRMAN PERATA: There was an example that came  
24 to mind. If one aspired to be a deputy commissioner of the  
25 Board of Parole Hearings, you have to have two years' experience  
26 as a Parole Agent III. But Parole Agent IIIs are paid \$1100 a  
27 month more than a deputy commissioner.

28 Even with my meager math skills, that ain't a



1 very good deal.

2 How do you manage these thing? What's going on?  
3 I know when Dave was here, we talked a lot about compaction.

4 How are you dealing with that?

5 MS. ENDSLEY: Well, first of all, I want to say  
6 with deputy commissioner, I did check into that because I am  
7 aware of the situation. And the deputy commissioner is actually  
8 tied to the attorneys who are in active bargaining right now, so  
9 once that bargaining unit does change --

10 CHAIRMAN PERATA: CASE?

11 MS. ENDSLEY: Yes. Once they do change, then  
12 that -- that classification will also change.

13 But that does bring up something that is very  
14 important. Because of the different ties that we have to the  
15 different bargaining units, we do end up with situations of  
16 compaction and of inversion, which is even worse.

17 Very recently, in fact, this is the first time  
18 it's ever been done, in November we went out to all departments  
19 asked them to give us every single one of their pay issues. In  
20 other words, where are your problems areas?

21 We received 308 of those, and we are now going  
22 through a very definitive process to prioritize those and start  
23 working at our most problematic areas. So, I think that that  
24 will help us tremendously. It will also help the departments  
25 because they don't have to -- I should just say it's a  
26 streamlined approach, and it helps us tremendously.

27 CHAIRMAN PERATA: I'll put in a plug for CASE and  
28 the lawyers. A lot of the lawyers now working, at least the

1 ones that I know that work at Administrative Law or for the  
2 Attorney General, their ability to compete on the open market is  
3 becoming less and less. It's not that people who finish in the  
4 bottom 10 percent of their law class aren't competent, but  
5 everybody else is recruiting the top third or the top fourth.

6 And I realize that it's always a function of  
7 money, but everything we do here, we rely upon lawyers, not by  
8 choice, lawyers to determine, to interpret. If we don't have  
9 competent people in the system, then we're at the mercy of those  
10 who can pay for the best, and this is not good for the  
11 democracy.

12 Now you can go in peace. You're fine; you had  
13 your lesson.

14 Any other questions?

15 You've got a very fine reputation. I don't know  
16 how you've been working here 31 years. You don't have that much  
17 mileage on you.

18 [Laughter.]

19 MS. ENDSLEY: Thank you.

20 CHAIRMAN PERATA: Do you have family here?

21 MS. ENDSLEY: No, I don't.

22 CHAIRMAN PERATA: That's smart.

23 [Laughter.]

24 CHAIRMAN PERATA: I guess we can just do a show  
25 of hands, anybody like to come and speak in favor of your boss?

26 [Laughter.]

27 CHAIRMAN PERATA: Okay. How many of you are here  
28 in support of her? That's nice. If you want to stay for

1 Richard Costigan, he'd really appreciate it.

2 [Laughter.]

3 CHAIRMAN PERATA: Anybody here in opposition?  
4 Seeing none.

5 SENATOR ASHBURN: I'll make a motion.

6 CHAIRMAN PERATA: Motion to approve. Please call  
7 the roll.

8 SECRETARY WEBB: Cedillo.

9 SENATOR CEDILLO: Aye.

10 SECRETARY WEBB: Cedillo Aye. Dutton.

11 SENATOR DUTTON: Aye.

12 SECRETARY WEBB: Dutton Aye. Padilla.

13 SENATOR PADILLA: Aye.

14 SECRETARY WEBB: Padilla Aye. Ashburn.

15 SENATOR ASHBURN: Aye.

16 SECRETARY WEBB: Ashburn Aye. Perata.

17 CHAIRMAN PERATA: Aye.

18 SECRETARY WEBB: Perata Aye. Five to zero.

19 CHAIRMAN PERATA: Five-zero, congratulations.

20 MS. ENDSLEY: Thank you so much.

21 CHAIRMAN PERATA: We don't expect you to stay,  
22 honest. I know you're all headed to Morton's for a party.  
23 We'll give you a moment to exit quietly.

24 While we're waiting, the aforementioned Richard  
25 Costigan, please come forward.

26 Welcome.

27 MR. COSTIGAN: Thank you.

28 CHAIRMAN PERATA: I don't know if you want to say

1 anything to us, but go right ahead.

2 MR. COSTIGAN: Well, good afternoon. I'm Richard  
3 Costigan. It is an honor and a privilege to come before you.

4 I have actually stressed over the last two or  
5 three weeks as to how this hearing would go.

6 CHAIRMAN PERATA: That's a shock. Knowing you, I  
7 can't believe that you were stressing.

8 MR. COSTIGAN: But I do want to talk a little  
9 about the State Personnel Board, and what we do, and one of the  
10 reasons that I'm actually very honored and privileged that I was  
11 appointed to SPB.

12 A little of my background outside of the  
13 Legislature. When I started practicing law in 1996 in Georgia,  
14 one of the things I actually did was represent employees in  
15 similar actions in both City Council, City of Atlanta, and in  
16 the State of Georgia.

17 When I moved out here in 1996, I was appointed to  
18 the Placer County Civil Service Commission where I served for  
19 seven years. I shared the last three years and gave up that  
20 position when I went into the administration. And when I was  
21 asking the Governor and talking to him about what I'd like to do  
22 to continue my state service, because since 1996 -- although  
23 Debbie's been it for 31 years -- 9 out of the last 12 years I've  
24 actually been in state service where I have worked in the State  
25 Legislature and in the administration. And I still consider  
26 myself to be in state employment as a part-time member of the  
27 State Personnel Board.

28 And as Senator Padilla was talking with the



1 Deputy Director of DPA and yesterday in our meeting, we do face  
2 a crisis in retaining state workers. Over the next five years,  
3 we're going to see 80,000 become eligible. And I want to be  
4 part of the challenge and part of the process that at least  
5 moves the state forward to continue to retain, recruit, attract,  
6 process, and allow state workers to move up.

7 So, it allows me a passion I enjoy. I loved  
8 being on the Placer County Civil Service Commission, and I have  
9 enjoyed this past year serving on the Civil Service -- the State  
10 Personnel Board and learned a lot more about state government  
11 that I actually didn't know existed until I got on to the Board.

12 So with that, I am happy to take any questions,  
13 comments, or concerns.

14 CHAIRMAN PERATA: I have one. As you've  
15 indicated, your experience is broad. One of the things that we  
16 always face -- and "we" I would say probably Democrats more than  
17 Republicans -- is that when you're going to talk about  
18 contracting out or outsourcing, oftentimes the projected  
19 savings that would incur are really not based on very much  
20 empirical evidence. The cost analysis, of course, falls with  
21 the Board.

22 Is anything being done to try to strengthen that?  
23 We're talking state employees are the ones that are taking it in  
24 the neck. So, what's going on with that, if anything?

25 MR. COSTIGAN: First of all, there is a two-step  
26 process. One which the Board is directly involved in, and one  
27 in which the board is not.

28 Back in 2006, this was an issue that was raised



1 by some of the labor organizations. And as a result of a series  
2 of meetings that took place between the employer representatives  
3 and various administration officials, the Board adopted earlier  
4 this year a new set of regulations that'll go into effect on  
5 February 4th. We refer to this as the apples-to-apples  
6 comparison.

7 In the past, one of the issues which has been  
8 raised is for a private sector employee, the issue that comes is  
9 how do you quantify training? How do you quantify benefits?  
10 How do you quantify other issues that the state was charging?

11 So, in order to create a more level playing  
12 field, the new regs, which I have copies for all the Members,  
13 were adopted, will go into effect on February 4th. It'll give  
14 us an opportunity over the next several months to see whether or  
15 not this in fact improves the process.

16 What's unique about this process is that as the  
17 departments go out and seek these contracts, there is a  
18 notification to the labor organizations, who then have an appeal  
19 right. That's -- if I have my columns right -- that's Column B  
20 of the statute.

21 The one that creates some serious issues is  
22 Column A, which we don't know about, and the labor organizations  
23 have to go out and find about. And that's when DGS approves it  
24 without notifying anybody. And there are 10 exemptions or 10  
25 exceptions that you have to meet that criteria, and then DGS  
26 approves it. Once that contract is let, and they're generally  
27 for short term, if there is in fact opposition, then that appeal  
28 is brought to the Board.

1                   So, if you do look at it as a two-track system,  
2 one is, there is a bid of pre-approval that both SPB and the  
3 employer groups know about it -- employee groups know about it.  
4 On the other side, we don't know about it unless an appeal is  
5 brought to us.

6                   We certainly hope the new regs that will go into  
7 effect, again, on the 4th, will address many of the concerns  
8 that have been raised in the past.

9                   CHAIRMAN PERATA: Senator.

10                  SENATOR PADILLA: I checked the first question  
11 off my box.

12                  But just to follow up on the previous  
13 conversation about succession planning, to hear that about half  
14 of state departments and agencies have succession planning in  
15 place, and not even speaking to the quality of that plan, but  
16 that means that the other 50 percent don't have a complete plan  
17 in place.

18                  What level of oversight and accountability is the  
19 Board providing or are you helping to provide?

20                  MR. COSTIGAN: Yeah. First is, you're very  
21 correct. One of the things that I've done and I intend to  
22 continue to do with the great help of our staff, our Executive  
23 Officer Suzy Ambrose, and Elise Rose, our General Counsel, and  
24 others is, over the past few weeks and the past few months, as  
25 part of what Debbie was talking with HR modernization, one is  
26 going out.

27                  And we've been going out and meeting with  
28 department directors, secretaries, asking for additional PYs and

1 the money that the Legislature provided to us. We only had the  
2 five positions; we need about 75 positions, whether they're  
3 loaned the money, so we've been going out.

4 And part of that has been an education process.  
5 One is waking folks up and saying, "Look, we're going to have  
6 this crisis."

7 But it's sort of two-fold. An interesting  
8 statistic is, while you look at there's a need for 80,000 --  
9 potentially 80,000 workers will become eligible over the next  
10 five years, what we have right now, just even from a process  
11 standpoint, is currently we have over 316,000 people sitting on  
12 eligibility lists. So, when you talk about how do you marry up  
13 the loss of the workers and attracting new ones in, it is really  
14 getting departments to recognize, a, the crisis is coming.  
15 Whether you want to ignore it or not, the fact is we're either  
16 losing to the private sector or we're losing to local government  
17 that oftentimes can pay higher salaries.

18 What it comes down to is, how do we make the  
19 process easier to attract people, because right now one of the  
20 issues is employees -- prospective employees have a hard time  
21 actually figuring out how to get into state service. The other  
22 is getting departments to realize that while resources may not  
23 exist now, this is not a one-year 2007-2008, or a '08-09 issue.  
24 The fact is, it's an issue over the next five years, and they're  
25 going to need to wake up.

26 The HR modernization will begin addressing that.  
27 And working with the Department of Finance, DPA and SPB, we're  
28 going to continue to go out and educate.

1 I think Senator Ashburn has got a workforce  
2 meeting coming up in February. Part of what we need to do is  
3 continue to educate the departments this is going to happen.  
4 Because the fear is that in three or four years, they wake up  
5 and they've lost most of their management employees to  
6 retirement.

7 SENATOR PADILLA: So again, what kind of  
8 accountability's in place for department heads who don't step  
9 up?

10 MR. COSTIGAN: Well, one is, when we asked the  
11 departments for their strategic plans, SPB has the opportunity  
12 to review it.

13 We are not vested, nor do we have the authority  
14 to dictate to a department -- I'm not going to pick on any  
15 department -- and say, "Either we're going to penalize you  
16 financially, or we're going to assess some other," that's an  
17 evaluation for both the administration and the Legislature to  
18 give teeth to having departments make -- if they fail to make  
19 that determination that there is in fact a crisis, that they  
20 suffer a repercussion.

21 Right now we can say to a department, "The fact  
22 is you don't have a succession plan in place," and we can  
23 encourage them to continue to do that.

24 Now, what we certainly hope is HR modernization,  
25 which will go through 2011, won't that address many of these  
26 concerns? We've talked about getting new automation on line,  
27 streamlining the process to move inside of government, the fact  
28 that we have currently 4200 classes, of which 980 are vacant. I



1 mean, what we're certainly hoping as a Board, we're going to be  
2 able to take measures that will help in both recruitment and  
3 retention of workers.

4 Is there a silver bullet, as we talked about  
5 yesterday? No, not at this point. A lot of it is a resource  
6 issue. The other is --

7 SENATOR PADILLA: When we met yesterday, we did  
8 share a couple of things of what we're doing innovatively to get  
9 people in the front door.

10 MR. COSTIGAN: Well, one thing that we've been  
11 doing -- and I'll take credit but it's been Suzy Ambrose and  
12 Elise Rose, I mean, as a part-time Board we rely heavily on our  
13 staff -- we look for areas where there no fiscal costs. For  
14 example, we're trying to work with the UC system right now in a  
15 way to make recent college graduates aware that state service is  
16 an option for them. We're going to do more outreach to the  
17 community colleges and the CSU system. You can make an  
18 argument, there's limited cost to that.

19 Recently we adopted a new online SSA, a service  
20 systems analyst. Where before you used to have come to  
21 Sacramento to take a test, now you're able to take it online.  
22 Since August, we've had 16,000 people take the exam who are now  
23 eligible to be hired, although we have a question about where  
24 they are in the ranks. A large number of these employees run  
25 Rank 4. But the fact is, we've moved to more automation.

26 One of the things we have talked about is, we're  
27 going to create a new web site. It may take awhile to get.  
28 There again, it's a resource issue, but ultimately what the web



1 site's going to do is, more my terminology, becomes the  
2 Monster.com for the state. Currently it is difficult to make a  
3 determination, if you want a job, where do you go. Most people  
4 wouldn't think the State Personnel Board. So, through the great  
5 folks at DPA and SPB, they're going to come up with, and we've  
6 seen the current -- what the current site's going to look  
7 like -- is, you're going to be able to log into a system, type  
8 in parameters you're looking for, the type of salary you're  
9 looking for, type of classifications, and you're going to be  
10 able to instantaneously find out what jobs are available.

11 When they were doing some market research with  
12 refining with using the current SPB web site, typically it took  
13 you three to four minutes to actually find the link to find the  
14 jobs. Under this new-vamped web site, they're talking about in  
15 under three seconds. And using technology I had no idea exists,  
16 they're able to track eye movement on a computer screen, and  
17 that's where they've determined these hot links, and that's why  
18 we're seeing, at least in the preliminary demonstrations we've  
19 had, seeing it go down from three to four minutes to two to  
20 three seconds, and being able to find a job.

21 Certainly we hope that's going to address on a  
22 going forward basis, but that's one of the problems. Again,  
23 with all this, it still comes down to a resource issue.

24 SENATOR PADILLA: Monster.com is taken. Let me  
25 suggest that Terminator.com is not where to go to find a job.

26 MR. COSTIGAN: As I was cautioned yesterday, I  
27 think I let the link out, and I wasn't supposed to say what the  
28 site was going to be at this point. But they've all ready found

1 a site that I think most people would be able to easily find  
2 through any type of web search.

3 SENATOR PADILLA: And again, I'll ask you the  
4 question. Is state government unique in what we're  
5 experiencing, or what can you say about cities, counties, other  
6 public agencies throughout the state?

7 MR. COSTIGAN: Well, one is that I want to  
8 address -- I'll address that question and I'll also address  
9 another one you raised about the purpose of the -- the  
10 prominence of the civil service system.

11 I mean, first of all, it's in the Constitution.  
12 It is a -- it is more than just a statute. It is a fact that  
13 the people this state made it so important they placed it into  
14 the Constitution, which should not be taken lightly.

15 When you look at what's going on in the local  
16 government side or the private sector side, we will always have  
17 a resource issue that may put us at a disadvantage with the  
18 private sector. We may have an issue sometimes with local  
19 government, but the issue is before we get there, we have to  
20 make it easy for people actually look at the state as an  
21 employer. Right now we have not achieved that. The fact is  
22 that we're sitting with 316,000 people.

23 The SSA classification was created because we had  
24 executive fellows, Senate fellows and Assembly fellows, that sat  
25 so long waiting to be hired, they took private sector jobs. And  
26 so, when you look at how important that system is, the process  
27 is extremely important, being able to streamline it, because of  
28 the difference is waiting six months for a state job, or being

1     able to get hired next week by my law firm. You're going to  
2     take the job that you can get immediately, not have to wait six  
3     months for it, and we've got to change that. And that's  
4     hopefully the new automated systems we're going to move to that  
5     HR modernization and others are going to address.

6                     SENATOR PADILLA: Thank you.

7                     CHAIRMAN PERATA: Gil, want to get even? Senator  
8     Ashburn?

9                     SENATOR ASHBURN: No questions.

10                    CHAIRMAN PERATA: Is there anyone here other than  
11     works for him who'd like to come up and speak in favor? In  
12     opposition?

13                    I received a letter of opposition just the last  
14     minute. I didn't have a chance to distribute it, but it's from  
15     the other four State Personnel Board members, asking that you  
16     not be confirmed.

17                             [Laughter.]

18                    CHAIRMAN PERATA: Pat Clarey, Anne Sheehan,  
19     Maeley Tom, and Sean Harrigan. But I don't know any of them.

20                    Well, first of all, you or whoever created the  
21     Personnel Board managed to get around term limits. You're going  
22     to be there until the second coming of the Lord.

23                    MR. COSTIGAN: However, it is only a one-third.  
24     While it looks like it's ten years, it's actually the equivalent  
25     of only three-one-and-one-third years.

26                    CHAIRMAN PERATA: Why?

27                    MR. COSTIGAN: It's a part-time board, one-third  
28     to one-third.

1 CHAIRMAN PERATA: Does he sound like a lawyer or  
2 what?

3 [Laughter.]

4 CHAIRMAN PERATA: You're going to bring all new  
5 vistas to the board.

6 [Laughter.]

7 CHAIRMAN PERATA: Well, having had an opportunity  
8 to work with you when you were the Leg. Director for the  
9 Governor, I'm just delighted that you're going to stick around  
10 to do something constructive in government. I think you've got  
11 a good feel for it, and there's no doubt that you are  
12 dedicated. So, I'm very proud to support you.

13 SENATOR ASHBURN: I'll make the motion.

14 CHAIRMAN PERATA: Did any family come?

15 MR. COSTIGAN: I actually told my wife not to  
16 coming.

17 CHAIRMAN PERATA: That's good.

18 MR. COSTIGAN: Again, I stressed the last three  
19 weeks.

20 CHAIRMAN PERATA: You should have called.

21 Call the roll, please.

22 SECRETARY WEBB: Cedillo.

23 SENATOR CEDILLO: Aye.

24 SECRETARY WEBB: Cedillo Aye. Dutton.

25 SENATOR DUTTON: Aye.

26 SECRETARY WEBB: Dutton Aye. Padilla.

27 SENATOR PADILLA: Aye.

28 SECRETARY WEBB: Padilla Aye. Ashburn.



1 SENATOR ASHBURN: Aye.

2 SECRETARY WEBB: Ashburn Aye. Perata.

3 CHAIRMAN PERATA: Aye.

4 SECRETARY WEBB: Perata Aye. Five to zero.

5 CHAIRMAN PERATA: Congratulations, Richard.

6 MR. COSTIGAN: Thank you.

7 CHAIRMAN PERATA: We'll take the next three  
8 members of the Corrections Standards Authority as an unit.

9 We have Lois Wolk, an Assembly Member, would like  
10 to introduce Sheriff Prieto, and then we'll have everybody else  
11 come up.

12 Welcome. Welcome, Sheriff.

13 ASSEMBLY MEMBER WOLK: Thank you, Mr. Chair,  
14 Members.

15 Good afternoon. I'm very pleased to introduce to  
16 you Yolo County Sheriff Ed Prieto, comes before you for  
17 confirmation to the Corrections Standards Authority.

18 I've known Ed for over a decade, both personally  
19 and professionally. He brings 41 years of law enforcement  
20 experience; 31 of those years with the California Highway  
21 Patrol, first as a motorcycle policeman, later as a commander  
22 before he was elected Yolo County Sheriff in 1998. He's been  
23 twice reelected without opposition.

24 He represents the very best that we have in  
25 California law enforcement today. He's turned this Sheriff's  
26 Department into a model law enforcement agency. He increased  
27 training five-fold for the entire department to ensure  
28 professionally trained staff.



1                   He collaborates with many in the community: our  
2     tribe, the Rumsey Band of the Wintoon Indians, chambers of  
3     commerce, Latino organizations, with everyone. He has increased  
4     patrol which, as you know, is extremely important in a rural  
5     county. He started a senior volunteer program, a posse, a  
6     Sheriff's Posse, and enlarged the Animal Services annex,  
7     basically using outside grant funding.

8                   He's made the department technologic -- brought  
9     it into the technological 21st Century, and officer safety has  
10    been improved as well. He's a life-long advocate of human  
11    rights. He was asked to co-author a professional police ethics  
12    course that has been taught to a number of law enforcement  
13    officials.

14                  We don't always agree with our sheriffs. You  
15    know that if you've been in local government, and you understand  
16    that. But I can always count on Ed to tell it straight, to do  
17    his homework, and I count on his advice regularly.

18                  I can't talk about Ed without telling you about  
19    Mona, his wife, who in addition to being a wife and mother is a  
20    distinguished law enforcement careerist of her own. She started  
21    as the first woman motorcycle officer in the CHP, now one of the  
22    highest ranking women in the CHP. She's been recognized by the  
23    Governor and the First Lady. She enjoys a place in the  
24    California Women's History Museum, and I hope that the state  
25    will tap into her considerable expertise in the near future.

26                  I'm very proud to introduce to you the Sheriff  
27    and to encourage your confirmation. He will perform. He'll be  
28    great.

1 Thank you, Mr. Chair.

2 CHAIRMAN PERATA: Thank you. We appreciate you  
3 being here.

4 We can also now have, just because you don't have  
5 Assembly people introducing you, Linda Penner and Travis Townsy,  
6 please come forward.

7 Sheriff, before you start, how many bars are on  
8 your sleeve?

9 SHERIFF PRIETO: Eight. There should be ten.

10 CHAIRMAN PERATA: Ten?

11 SHERIFF PRIETO: There should be ten.

12 CHAIRMAN PERATA: Five each?

13 SHERIFF PRIETO: Four each.

14 CHAIRMAN PERATA: Goodness.

15 SHERIFF PRIETO: Long time.

16 CHAIRMAN PERATA: Maybe make this a career, huh?

17 [Laughter.]

18 SHERIFF PRIETO: I decided to. I come from a  
19 career -- I come from a family of career officers. My father  
20 was a CHP officer for 31 years, and my uncle was an LAPD officer  
21 for 34 years. My cousin, the same; he was with the county  
22 probation for 32 years, LA County. So, we come from a long list  
23 of law enforcement.

24 CHAIRMAN PERATA: Do you ever.

25 Why don't you go ahead and open on the topic at  
26 hand, and feel free to say anything you want in order. Say the  
27 same things, if you want.

28 SHERIFF PRIETO: For me, I think everything was

1 said. I enjoy what I do. I enjoy working and volunteering my  
2 time with the CSA, and hopefully I look forward to working with  
3 them in the future.

4 It's been a good experience for me. Even after  
5 40 years of law enforcement, it's nice to know that it's a  
6 continuous learning experience. And believe me, this has been a  
7 big learning experience for me.

8 That's all I have to say.

9 CHAIRMAN PERATA: Fair enough.

10 MS. PENNER: Hi, Linda Penner. I'm Chief  
11 Probation Officer in Fresno County.

12 It's a pleasure to be here with all of the  
13 esteemed Members of our Legislature. Admittedly a little  
14 nervous. The preparation sort of hoisted my anxiety, but I've  
15 figured out in life once you're anxious, it means you might be  
16 doing something right, and you're in the right place at the  
17 right time.

18 I've been with the Fresno County Probation  
19 Department for 30 years. I know I don't look that old. You  
20 don't you have to say it. It's all good.

21 [Laughter.]

22 CHAIRMAN PERATA: You stepped on my lines.

23 MS. PENNER: You could say it again, if you want.

24 I'm pleased to tell you that I started my career  
25 there as a victim witness advocate. Right after I finished  
26 college I needed money. I needed that \$525 to pay the bills. I  
27 worked in that capacity for nine years. I worked with young  
28 people who were going through the court process that were

1 sexually assaulted. It was the best work I've ever done.

2 They wouldn't let me stay there. They said I had  
3 to become a probation officer to stay in the department. And  
4 from there, the rest is history.

5 The only thing I'll tell about you my rise  
6 through the ranks is that I'm the first internal candidate  
7 chosen for chief in the last 20 years. I'm the first woman  
8 ever.

9 I enjoy a freshman class of women in Fresno  
10 County who were all appointed within the first year: The first  
11 female district attorney; the first female presiding judge; the  
12 first female sheriff; and now the first female chief. So, I'm  
13 pretty proud of that.

14 I run a department of 700 employees, \$70 million  
15 budget, 38 million of that is hard county cash; the rest is  
16 money I scrape and borrow. I run an adult division and a  
17 juvenile division. Personally my passion is with children.

18 I believe in collaboration. I believe in  
19 bringing people together to get a job done. I think that's a  
20 solution we're going to see that the state is embarking on as we  
21 speak, reaching back to the locals and looking for some relief.

22 With that said, I'll pass to my colleague.

23 CHAIRMAN PERATA: What the hell has happened to  
24 Fresno County? If there was ever a place you could rely on for  
25 a bunch of old white guys, it was Fresno.

26 [Laughter.]

27 MS. PENNER: Right. They weren't looking when  
28 this happened.



1 CHAIRMAN PERATA: Obviously.

2 MS. PENNER: An oversight, but it's there.

3 CHAIRMAN PERATA: Sheriff Autry was out of town?

4 [Laughter.]

5 SENATOR ASHBURN: The voters did a lot of it.

6 MS. PENNER: Yeah.

7 CHAIRMAN PERATA: That explains it.

8 MS. PENNER: It was huge. And the board and the  
9 superior court judges didn't know the errors of my way when they  
10 made a decision.

11 CHAIRMAN PERATA: I've met most of those judges.

12 Yes, sir.

13 MR. TOWNSY: My name is Travis Townsy,  
14 Correctional Officer at Folsom State Prison. I've been there in  
15 April for approximately 21 years. By all sense of the words,  
16 that's what I do. I'm a correctional officer. I'm a grunt.  
17 I'm on the line. I'm the feelers. Whatever you construct here,  
18 I implement it on the tiers and enforce it. I see just how red  
19 the blood comes out. I hear the inmates. I hear the officers.  
20 I hear the staff, the administration. I'm right there.

21 For that, I'm extremely proud just to be here  
22 before you today because just from where I come from, I just  
23 don't feel there's -- I'm a true representative of all of the  
24 line staff.

25 First and foremost, public safety is always our  
26 concern, who we let go. Recidivism, always a concern.

27 But at the same time, privileged because it is  
28 rewarding when you're in a career where it's possibly, in my



1 opinion, not the most dangerous, but the absolute most negative  
2 environment that you can be in. It's a situation where nobody  
3 wants to be there.

4 Everybody there that Sheriff Prieto sends, I get  
5 them. I'm there for their first phone call to their mother when  
6 I have to say no, and I'm there when I walk them out the gate.  
7 I'm also there if they come back in a couple of weeks.

8 So, I just thank you for the opportunity. My  
9 colleagues spoke very well just on the privilege of being here,  
10 and I thank you for your time.

11 CHAIRMAN PERATA: Thank you.

12 You would not normally have to be here and miss  
13 all this fun. But since you're charged with implementing  
14 AB 900, the prison facilities bill, I thought it would be useful  
15 for us to talk to you directly about why it is that some of us  
16 voted for this. I'm not even sure how other people voted, but I  
17 remember I did. The Governor said it would be good for me.

18 [Laughter.]

19 SENATOR DUTTON: Me too.

20 CHAIRMAN PERATA: Sheriff, you're the co-chair  
21 with Sheriff Penrod. Speaker Nunez and I had sent a letter to  
22 you a while back, which I understand you never saw. Without  
23 asking you to comment on who it was that didn't give it to you,  
24 I would encourage you to make sure that doesn't happen again.  
25 It's just bad form.

26 SHERIFF PRIETO: I will, thank you.

27 CHAIRMAN PERATA: What I want to ask specifically  
28 is, in AB 900 it was very clear that the counties who stepped

1 up, counties like Fresno, to the reentry facilities should be  
2 given funding priority for county jail beds, yet the RFP did not  
3 reflect that.

4 Why did that happen? Again, it comes down to  
5 every once in a while when we do something legislatively, we  
6 mean what we do. And that's something we spent quite a bit of  
7 time talking about, so we were surprised when the RFP didn't  
8 show that up.

9 SHERIFF PRIETO: If I can respond to that,  
10 please.

11 In reality, the first RFP that went out was the  
12 draft, and it did have some point systems for the reentry and  
13 also for the mental health and the continuous assistance  
14 subsequent to -- for inmates who were going to be on parole.  
15 However, the point system was not very high compared to the  
16 needs assessment, and so on and so forth.

17 When we reviewed the intent, and I have to speak  
18 for myself, I was under the impression, and I went basically by  
19 the levels of AB 900, the first in my estimation at that time,  
20 the first high priority was additional county beds, which -- it  
21 was at the very top of AB 900: 4,000.

22 Secondary was the reentry, which was 2,000 beds,  
23 and the third was the medical, the continuous assistance of  
24 those on parole.

25 When we started the point system, or actually  
26 that was set up by a consultant, total points of 1,050 points  
27 was originally set up, we were under the impression that we were  
28 doing the proper thing by sort of indicating that the need

1 assessment of an agency was of paramount importance, because if  
2 a county could not dictate or clearly establish the need, they  
3 would never be able to get to the reentry program. So, we felt  
4 that the need assessment should be -- should be the highest  
5 category, and then we progressively moved on the additional  
6 eight categories.

7 When we got down to the level of the reentry and  
8 also the mental health and the continuous assistance, that was  
9 sort of the last of the points. We had already addressed those  
10 additional points to the other categories.

11 It was not in any way distinguished or even  
12 supposed to distinguish that we were not concerned about the  
13 reentry. On the contrary, we were very supportive.

14 However, when it first came out we were told that  
15 the CDCR was going to make the -- they were going to dictate  
16 what counties received the funding of the reentry programs, and  
17 what counties were not. So, we felt at that point that CDCR was  
18 going to appoint the counties, and initially they came out  
19 indicating that they wanted the metropolitan areas to have most  
20 or the large majority of the reentry.

21 So, we felt at that point the only way the other  
22 counties, those smaller counties like Yolo County, could be  
23 competitive is to make sure that all counties, that we  
24 distributed the 740 million over all the counties. So, we had a  
25 section of small-sized counties, which is approximately 31  
26 counties, then we had the mid-sized counties, then we had the  
27 big counties like LA.

28 In the past, again in my personal experience,

1 it's been that generally when a grant comes out, a federal or  
2 state, that the big counties who seem to have a much larger  
3 necessity than smaller counties receive a large majority of the  
4 funds. What we were hoping is that by developing this -- this  
5 system, this points system, that the smaller counties will also  
6 be competitive and also have an opportunity to get some of this  
7 funding.

8 The needs at the lower counties may not be as  
9 great, but they're just as important. Like for example Yolo  
10 County, we kick out anywhere from 2,000 to 2500 inmates a year  
11 because of our overcrowding. We also hold federal consent  
12 decree, which is going to be taken into consideration in the  
13 point systems.

14 So, when we discovered initially -- in reality, I  
15 never did receive that letter. I was aware of it, but looking  
16 at the date, we had doubled the points from 75 to 150 about the  
17 same time that this -- this letter that you're referring to was  
18 written. And I discovered that yesterday.

19 Like I said, I did not receive a copy of that  
20 letter. I was well aware of the concerns of yours and other  
21 Senators.

22 When those concerns were brought to us through  
23 actually Mr. Tilton prior to us -- to receiving this letter,  
24 those concerns were already brought to our attention. That's  
25 why we initially doubled it from 75 to 150 points subsequent to  
26 the letter. And then later on I did receive a letter from the  
27 Governor indicating that they wanted more emphasis placed on  
28 this.



1 I spoke to Mr. Tilton at another open forum. He  
2 explained to me the situation, the thoughts of the Senators, the  
3 thoughts of what the intent of AB 900 was. All of us supported  
4 it. There was no opposition whatsoever.

5 I think the rough draft did have all of those  
6 categories covered, except not to the level or the degree that  
7 perhaps they should have been. And obviously, that was probably  
8 on our part for the reason I just explained to you.

9 It's not to diminish the importance of reentry.  
10 I'm a staunch supporter of that; Penrod is; all of us are. All  
11 of us realize the importance of a reentry program. All of us  
12 realize dealing with inmates, that you see these inmates over  
13 and over again.

14 Speaking earlier with Senator Padilla, trying to  
15 consider how do you sort of embrace this and fix it, I'm not 100  
16 percent sure that you can eat the whole elephant at one time,  
17 but I do certainly believe in the direction that we're going  
18 with the reentry, I think that's an important issue.

19 When we did discover, like I said, that there was  
20 a greater need, and this was an open public forum, none of these  
21 RFPs were the final draft. It's like developing any other kind  
22 of a concept or idea or new system, you have to listen to  
23 everybody's input, and then you start developing and  
24 strengthening it, and making it much more effective.

25 I think that the end result was, now there's 300  
26 points for the reentry. There 100 points for mental health,  
27 which is a total of 400 points.

28 Some of the smaller counties, I've already



1 indicated, they may not be able to compete because it's been  
2 modified now. Where before you received so many points if you  
3 designated a site, or helped the state find a site, now it's --  
4 to get the majority of points, you have to have a site. It has  
5 to be valued; the property has to be valued. So, there's still  
6 sort of fixes being taken place.

7           Some smaller counties, some of them feel like  
8 they're not going to be able to compete at all. We went from  
9 12,000,500 to the small counties to be able to -- we changed the  
10 financial arrangement. A smaller county now could get  
11 approximately \$30 million, mid-sized counties can get up to \$80  
12 million, and the big counties can get 100 million.

13           Now, we actually have two categories with the  
14 small counties, and the medium and the large counties together  
15 in the same category. We sincerely believe that when we finally  
16 did reach what we believe is the final cut of this RFP, that it  
17 had met everybody's needs and everybody's concerns.

18           At no time ever did we -- did we think --  
19 somebody brought up the fact that, you know, this is a political  
20 thing or whatever. I'll be very candid with you. I've been a  
21 cop for 40 years. I'm not that sophisticated to start thinking  
22 of political moves this way and that way.

23           We approached it with the most honest way that we  
24 felt would be fairest, that would benefit every county, that  
25 every county would be open to competing. And that's the way we  
26 approached it.

27           But when it was sort of clearly established to us  
28 that we were going the wrong direction, we backed up ten,

1 punted, and made the necessary changes, like I said, without any  
2 opposition.

3 Thank you.

4 CHAIRMAN PERATA: Forty years, aw shucks.

5 [Laughter.]

6 CHAIRMAN PERATA: That might go shopping  
7 somewhere.

8 Chief, anything to add?

9 MS. PENNER: Well, I wasn't intricately involved  
10 in the process.

11 CHAIRMAN PERATA: Then we don't care what you  
12 thought. No, I was just kidding.

13 [Laughter.]

14 CHAIRMAN PERATA: It does bring up something  
15 interesting, though. You're from a small county or smaller  
16 county.

17 MS. PENNER: I represent a large county,  
18 actually. We're just under a million.

19 CHAIRMAN PERATA: Excuse me. But probably your  
20 sympathies must be towards your surrounding counties; right?

21 MS. PENNER: No empathy, but I think there are  
22 great need with the smaller counties. Ours are incredibly  
23 diverse comparatively.

24 CHAIRMAN PERATA: I would just say that if I  
25 didn't get a direction, if I were sitting where you were  
26 sitting, and I didn't get a direction to do this, sophisticated  
27 or not, I'd put my thumb on the scale, so I understand that. It  
28 was only because there was a pointed direction to that.

1 But if people are not going to be showing you,  
2 then I don't know. It took a lot of time for Fabian and I to  
3 agree on the wording, whose name was going to go first. It took  
4 us a lot of time.

5 SHERIFF PRIETO: I would like to add one thing.

6 When I spoke to Nettie Sabelhaus, she made it --  
7 she brought up very good points of: Have I learned anything  
8 from this?

9 And I do say this, and I make this  
10 recommendation, because she was very persuasive in her  
11 approach --

12 [Laughter.]

13 SHERIFF PRIETO: -- that I think in the future  
14 one of the things I would do --

15 CHAIRMAN PERATA: Is call Nettie.

16 [Laughter.]

17 SHERIFF PRIETO: Call Nettie first, yeah,  
18 absolutely.

19 God forbid I ever get on one of these executive  
20 boards again.

21 [Laughter.]

22 SHERIFF PRIETO: But I would certainly approach  
23 individuals like Nettie and yourselves to really determine what  
24 is the exact intent. Because interpretation, you know, it's all  
25 in the hands of the interpreter.

26 CHAIRMAN PERATA: That's right. And frequently I  
27 have to ask her what I meant.

28 [Laughter.]

1 CHAIRMAN PERATA: She is very helpful in that.

2 Ms. Penner, you chaired the Juvenile Justice  
3 Executive Steering Committee, which is a mouthful. One thing  
4 that concerned me was that it's kind of top heavy with sheriff  
5 types -- nothing wrong with them -- and probation, young chief  
6 probation officers, but not too many advocates.

7 Can you explain that?

8 MS. PENNER: Yeah, I think I can.

9 First of all, it's never been in my history to  
10 shy away from advocates. You know, we just completed our first  
11 year in a large, \$142 million juvenile justice complex, and we  
12 utilized a Juvenile Justice Coordinating Council that helped us  
13 do just that with many stakeholders: from education, from  
14 mental health, from CBOs, from many, many other organizations.  
15 So, it would never have been an intentional lapse on my part to  
16 leave that out of there.

17 With that said, I can tell you that probation  
18 officers, chief probation officers, for many, many years have  
19 been running programs, and are well aware of the needs to take  
20 care of the young people that come our direction, because nobody  
21 comes into my facility, or any of the other chiefs, and stays  
22 there for the rest of their lives. It's our obligation the day  
23 they arrive is to begin planning for their success and reentry  
24 into the community, and to give them the tools it takes to have  
25 them become proactive out in that community, rather than go  
26 forward and commit more crimes.

27 I'm not adverse to any -- any members becoming  
28 forth on this committee. Frankly, I'm embarrassed I didn't see



1 it. And I take full responsibility for that.

2 CHAIRMAN PERATA: Nettie, Nettie got that.

3 [Laughter.]

4 MS. PENNER: Nettie helped me with that this  
5 morning also. She's a helping individual. She's got helping  
6 skills. I'm thinking about asking her to come to Fresno --

7 CHAIRMAN PERATA: Oh, yeah, absolutely.

8 MS. PENNER: -- in case I missed something there.

9 [Laughter.]

10 MS. PENNER: We did just recently add, and it's  
11 confirmed that she's on board, is Sue Burrell from the Youth Law  
12 Center. Sue participated fully in our ramping up of our  
13 facility.

14 I believe in transparency. If we can't do this  
15 like an open book, it's not going to get done appropriately. I  
16 think those who ask questions, and I shared with Nettie this  
17 morning, there's nothing bad about this process except it  
18 creates an environment wherein we have to look at what we're  
19 doing and what we're accepting, and the standard that we operate  
20 at.

21 So, you know, I look forward to adding members to  
22 this committee. We're in the infancy stages of it.

23 But the omission was not done in an effort not to  
24 do the right thing.

25 CHAIRMAN PERATA: We didn't think so. Even  
26 Nettie didn't think so.

27 MS. PENNER: I'm capable of that. I try not to  
28 do it.



1 CHAIRMAN PERATA: Any other questions.

2 SENATOR PADILLA: Just one other area, and we  
3 spoke about it in my office earlier.

4 Last year when Secretary Tilton was coming  
5 through for confirmation, we raised this topic of access and  
6 presence of cell phones in prisons. And while some people may  
7 say, well, these are the wrong appointees to ask this of since  
8 you're coming to the Authority, nonetheless if you're looking at  
9 construction issues and capacity within our prisons, how we  
10 construct and how we design future facilities, we ought to be  
11 keeping the utmost security concerns in mind.

12 I'm curious as to whether or not this has been a  
13 topic of conversation at your meetings? And if it has, if you  
14 can shed some light on that? And if it hasn't, why not? Might  
15 it be in the future?

16 SHERIFF PRIETO: On behalf of Yolo County, in all  
17 honesty, as I told you earlier this morning, I hadn't even heard  
18 of that issue as far as cell phones in jail facilities or prison  
19 facilities.

20 And one of the aspects, I think, to me is always  
21 that you be proactive instead of being reactive. And the  
22 important issue for us, that everybody in Yolo County, including  
23 myself, we go through a metal detector. And we make sure that  
24 we don't carry any weapons or anything that could be used  
25 against us, or something that, if someone else brings it, could  
26 be given to an inmate that's going to later cause us some  
27 difficulties and not put somebody in harm's way.

28 I think the important aspect is security. When

1 we talk about security, I think anybody that enters any  
2 facility, even if they're known assistants -- for example, we  
3 have many psychologists that come in and teach anger control;  
4 we have other advocates that come in -- that every one of those  
5 individuals are not, obviously, skin searched, but they do go  
6 through a search and procedure. And if any alarm is sounded,  
7 that we don't let them take their purses in, we don't let them  
8 take portfolios. They go in with the bare essentials to do the  
9 business they need to do.

10 So, I think you bring up a good point. I think  
11 for future facilities, I think the security systems are going to  
12 be even better than what they are in today's world.

13 But metal detection, the drug situation that we  
14 spoke about earlier, it's really difficult. We ourselves have  
15 two canines that work continuously, and we do surprise searches  
16 of the inmates without violating their rights any more than we  
17 have to, but also to keep a certain control of the contraband  
18 that does come in and out of that facility.

19 So, I agree with you 100 percent that we have to  
20 be proactive in future facilities and current facilities, that  
21 we have -- the protocol has to be for everybody, not just  
22 individuals, that everybody goes through some sort of a  
23 detection system, metal detection system, and make sure that all  
24 of us do the right thing for safety not only of us but also the  
25 inmates.

26 MR. TOWNSY: Mr. Padilla, we did speak about that  
27 earlier today.

28 I think it would be a comprehensive effort. We

1 now have 33 prisons, I believe, in just -- I don't know the  
2 amount of juvenile detention centers. But that has been a  
3 concern.

4 And as I expressed earlier, especially with the  
5 new change-over staff. We have a high ratio of staff turning  
6 over, being turned over due to medical -- the new medical techs  
7 and registered nurses, and LVNs, basically a lot of the people  
8 in this position now, since we eliminated the MTAs, and we are  
9 under the receiver, are not screened properly coming in.

10 So therefore, when you have a high turnover ratio  
11 of people, it's extremely dangerous in a situation such as ours  
12 that we work in every day, not just cell phones but drugs,  
13 contact, people getting to know you and know business about you.  
14 When they come under the guise of medicine but they're not  
15 full-time employees, but they have investments such as  
16 retirements, family concerns, when they can leave an institution  
17 and go across the street and get another job, or return back to  
18 private practice.

19 So, we do have a lot that we take on when we have  
20 outside entitites such as a receiver coming in, taking over our  
21 situation.

22 But at the same time, on that note, and I'll  
23 speak very brief, I believe that CSA as well as Legislators, we  
24 have to work cohesively together in harmony to work on these  
25 changes as we -- as we implement things like SB 900 [sic], all  
26 the Senate bills, because it's a concern for all of us. It is  
27 first and foremost public safety for our employees that  
28 represent these facilities in the line of duty.

1                   SENATOR PADILLA: Let me sort of repeat it back  
2 to you and make sure I understand it clearly.

3                   Because of the state of receivership of the  
4 health system in Corrections, that's caused new medical staff,  
5 or a turnover in medical staff?

6                   MR. TOWNSY: No, I'm not saying that.

7                   I'm saying that because of the new introduction  
8 of medical staff, that you will find a lot more contraband than  
9 in previous history. I don't have the stats. It's something  
10 now that we're dealing with.

11                  SENATOR PADILLA: But the bottom line here is,  
12 we're seeing a lot of new faces, if you will?

13                  MR. TOWNSY: Yes, sir.

14                  SENATOR PADILLA: And the turnover --

15                  MR. TOWNSY: The turnover ratio --

16                  SENATOR PADILLA: Whoever, the tech assistants  
17 and other medical staff can be one month different individuals,  
18 and the next month they don't necessarily have to go through  
19 much of a security --

20                  MR. TOWNSY: Backgrounds. Because medical is  
21 such a priority now, we need people. We have Armstrong; we have  
22 Plata; we have Perez; we have --

23                  SENATOR PADILLA: There's obviously a need for  
24 follow-up.

25                  MR. TOWNSY: The turnover ratio is very high.

26                  SENATOR PADILLA: There's obviously a need for  
27 follow-up.

28                  MR. TOWNSY: Yes, sir.



1           SENATOR PADILLA: But going back to my question,  
2 how much is this being discussed by this board? And if it  
3 hasn't been discussed previously, how will you in the future, as  
4 you look at design and construction of additional facilities, or  
5 retrofit of existing facilities?

6           SHERIFF PRIETO: I think you bring up points that  
7 will probably be discussed in the future. I do not believe  
8 they've been discussed as far as the phones in the past by CSA.

9           And in all honesty, I'm not too sure of what  
10 authority CSA has over the prison facilities. And I think  
11 that's something that certainly we'll talk to staff and bring  
12 those points up and determine what kind of authority we  
13 have.

14           SENATOR PADILLA: I look forward to following up  
15 with all of you.

16           SENATOR DUTTON: I was going to ask you about  
17 eating the whole elephant. How about maybe a cow.

18           [Laughter.]

19           SHERIFF PRIETO: If you're in San Bernardino, a  
20 cow would be great.

21           SENATOR DUTTON: I'm from Nebraska originally, so  
22 I was eating some corn husker beef, too.

23           On the AB 900, and you all spent a great deal of  
24 time with me in my office. I really appreciated the dialogue we  
25 had.

26           One of areas of concern I do have is with regards  
27 to the implementation of AB 900. What kind of provisions do we  
28 have for oversight to actually make sure? I mean, we've thrown



1 this money out there, but I'm really concerned, I think as most  
2 of us are, that we actually get it implemented as quickly as  
3 possible.

4 Any feel for where we are with getting something  
5 actually going in place?

6 SHERIFF PRIETO: Well, by March 28th, all the  
7 RFPs have to be in, and then by May the 8th for the final  
8 decisions of who's going to receive those grants.

9 Subsequent to that, and I think that's what we  
10 discussed earlier in, I believe, Senator Padilla's office, once  
11 CDCR signs the agreement, signs the total agreement that  
12 everything is -- all the -- everything is covered, each  
13 institution or each county has 36 months to implement and  
14 complete the entire construction.

15 So, a lot depends on where each county is. For  
16 example, Yolo County, we already have our plans. We already  
17 have our needs assessment. Some of the other counties are  
18 probably in the process of doing that.

19 But by March, when they submit the RFPs, and by  
20 May when the final decisions are made, I guess it's going to  
21 depend a great deal on how quickly CDCR gets with each county,  
22 makes a final decision, signs the documents necessary to go  
23 forward. And upon that date, it takes 36, or a maximum of 36  
24 months for them to build the new facility.

25 SENATOR DUTTON: I'll assume there's going to be  
26 some kind of a status report that's going to be available?

27 SHERIFF PRIETO: And that was discussed earlier  
28 before, and we believe that CDCR is going to be doing the

1 follow-up. And that's something again I will take back to the  
2 staff of CSA to see how much we need to be involved, or if we're  
3 going to be involved, or is this strictly CDCR.

4 But I think the important issue is that there is  
5 going to be some follow-up. Who does it, I think, is something  
6 we believe, or I believe at this point that it is going to be  
7 CDCR.

8 There will be, in my understanding, I don't know  
9 the total, there is going to be certain payoffs at certain times  
10 to make sure that the programs are moving forward.

11 SENATOR DUTTON: I have a feeling that for most  
12 of our Members, this is going to become a high priority for  
13 them.

14 SHERIFF PRIETO: I have a strong feeling that's  
15 going to happen also.

16 SENATOR DUTTON: So, I'm going to be asking, and  
17 I'm sure others will, too, for some type of periodic status  
18 update as to where we are, because I think we've reached  
19 critical status now, and it's no longer just a problem.

20 SHERIFF PRIETO: I think one way or another, you  
21 can rest assured there will be follow-up, and you will be  
22 updated. And I think that was also Senator Padilla's concern  
23 earlier today.

24 SENATOR DUTTON: Thank you.

25 CHAIRMAN PERATA: Well, now is the portion where  
26 anybody who wants to come up and take a free swing, anybody here  
27 in support.

28 Do any of you have family with you?

1 MR. TOWNSY: My wife.

2 CHAIRMAN PERATA: Welcome.

3 MS. PENNER: I have family. They're not here.

4 CHAIRMAN PERATA: That's good.

5 [Laughter.]

6 MS. PENNER: I want that on the record.

7 CHAIRMAN PERATA: We'll wait.

8 [Laughter.]

9 MS. PENNER: My husband is a state employee. He  
10 couldn't get the day off.

11 CHAIRMAN PERATA: I know how that is.

12 Anybody in favor? Anybody opposed? Fabulous.  
13 This is great.

14 Well, let me first of all thank all of you for  
15 your time.

16 Once again, the reason that you're here is  
17 nothing in your record that suggested that we needed to see you,  
18 but it's because I believe, without question, in the time that  
19 I've spent in state government, Corrections is the most screwed  
20 up department there is. Now in part I think that's because  
21 Californians, with the Correction system, has done so often what  
22 we do with everything else, we want the best. We want  
23 everything. We don't want to pay for it. So, we've got a lot  
24 of people under lock and key.

25 The Governor now has suggested that we should  
26 turn out 22,000 of them. I think that's going to be  
27 interesting.

28 But those of you who are in the business, I'm

1 delighted that there's somebody who walks the beat, the toughest  
2 beat, is here, and also that you have a vertically integrated  
3 authority. The old Board of Corrections I respected because it  
4 was inclusive, and it had a diversity of viewpoints. I think  
5 you have to bring that same kind of intensity to this.

6 There'll be some radical changes made this year,  
7 next year, year after. When you find a state like California in  
8 the financial condition we're in, teetering perhaps on  
9 bankruptcy -- maybe we can get that same receive to come in and  
10 take care of business for the state -- but we're in a world of  
11 hurt.

12 And I know this is not your day job, so we've got  
13 to rely on the staff. I haven't been too impressed so far, so a  
14 little ass kicking probably is in order. And I would just  
15 encourage you to do that.

16 I'd also encourage you, as you had mentioned,  
17 Mr. Townsy, we're in this where you've got to talk to us. We  
18 should shorten that throw so that we are working together.

19 I want to say one other thing. This is of a  
20 personal nature, as long as I have a member of the Corrections  
21 family here.

22 The Correctional Officers have taken out after  
23 personally on Prop. 93 me and Fabian Nunez, and it's over things  
24 that happened last year or didn't happen last year. A very  
25 dangerous precedent to start, and it's not because I'm Sicilian  
26 and Genovese.

27 [Laughter.]

28 CHAIRMAN PERATA: It's just a very bad thing to



1 do. I'm disappointed. I have never treated anybody in the  
2 institution with more than the utmost respect.

3 And I'm not blaming you for it, sir, but since  
4 you did say you probably typify and are a prototype of the  
5 correctional officers, you can just go back and say you've got  
6 one pissed off Senator.

7 Okay, I got that off my chest.

8 I would entertain a motion.

9 SENATOR ASHBURN: Motion to approve.

10 CHAIRMAN PERATA: Is your wife working?

11 SHERIFF PRIETO: I hope so.

12 CHAIRMAN PERATA: Because otherwise, I'd have  
13 expected her to be here.

14 [Laughter.]

15 SHERIFF PRIETO: She is actually in Washington,  
16 D.C.

17 CHAIRMAN PERATA: We'll do all three. Call the  
18 roll, please.

19 SECRETARY WEBB: Cedillo.

20 SENATOR CEDILLO: Aye.

21 SECRETARY WEBB: Cedillo Aye. Dutton.

22 SENATOR DUTTON: Aye.

23 SECRETARY WEBB: Dutton Aye. Padilla.

24 SENATOR PADILLA: Aye.

25 SECRETARY WEBB: Padilla Aye. Ashburn.

26 SENATOR ASHBURN: Aye.

27 SECRETARY WEBB: Ashburn Aye. Perata.

28 CHAIRMAN PERATA: Aye.



1 SECRETARY WEBB: Perata Aye. Five to zero.  
2 CHAIRMAN PERATA: Congratulations to all three of  
3 you.  
4 SHERIFF PRIETO: Thank you very much.  
5 CHAIRMAN PERATA: We're going to take a five or  
6 ten minute break so that the stenographer may rest for a moment.  
7 [Thereupon a brief recess was taken.]  
8 CHAIRMAN PERATA: We're back to live action.  
9 Is Mr. Abdulmajeed, are you here? You moved. We  
10 don't like those quick moves.  
11 Welcome, sir.  
12 MR. ABDULMAJEED: Thank you.  
13 CHAIRMAN PERATA: This is for the Board of Parole  
14 Hearings, Juvenile.  
15 MR. ABDULMAJEED: Yes, sir.  
16 CHAIRMAN PERATA: Welcome.  
17 MR. ABDULMAJEED: Good afternoon, Senator and all  
18 the rest of the Senators and staff.  
19 I'm honored to be here today, and I'm honored to  
20 have served in state service for the past 13 years.  
21 My full name is Askia Muhammad Abdulmajeed, and I  
22 humbly solicit your confirmation for my appointment in this  
23 position.  
24 My tour of state service began in 1991, when I  
25 was first appointed by Governor Pete Wilson to the California  
26 Department of Alcohol and Drug Programs as an assistant deputy  
27 director. And I believe that Governor Wilson made that  
28 appointment because I represented in his eyes the face of two of

1 the most intractable problems that our society continues to deal  
2 with, and that was substance abuse and homelessness because I  
3 had successfully battled and overcame both of them in Los  
4 Angeles.

5 During the first term with the Governor Wilson, I  
6 represented the department on access to service for underserved  
7 populations, empowerment of youth, program design,  
8 implementation and outreach to prisons.

9 Governor Wilson also somehow didn't feel like I  
10 had enough work, so he appointed me also to a second appointment  
11 to the Commission on the Status of African American Males, where  
12 I served along with Barbara Lee and some other members. I was  
13 Chair of the Health Task Force on that Commission, and in 1995  
14 during Governor Wilson's second term, through an interagency  
15 agreement, I was sent as a loaned executive to the California --  
16 then California Youth Authority. And I essentially began at  
17 Karl Holton, which was at that time the flagship drug and  
18 alcohol abuse treatment center for the California Youth  
19 Authority. I consulted with the superintendent on alcohol and  
20 drug treatment for youthful offenders, also with the -- I helped  
21 to prepare the wards for parole consideration. I worked with  
22 the regional parole agents on reentry of youthful offenders.  
23 And during -- I also worked and trained the staff on the impact  
24 of crime on victims. And I coordinated Governor Wilson's  
25 California Mentoring Initiative for the California Youth  
26 Authority.

27 After submitting my resignation of my appointment  
28 in 1998, I began working in the nonprofit sector, initially as a

1 special projects manager for two therapeutic community  
2 corrections programs that were both funded by the California  
3 Department of Corrections. I accepted -- I started out at the  
4 Volunteers of America in the Bay Area, managing their Community  
5 Prisoner Mother Programs. That was very interesting work.  
6 This was funded by the Department of Corrections.

7 Then in 2002, I also worked for the Center Point  
8 Incorporated as a manager of their coed Community Directions  
9 Program.

10 In 2002, I returned to state service as a  
11 volunteer chaplain at Old Folsom, and from there I went to Mule  
12 Creek State Prison as a volunteer chaplain, and I was hired  
13 full-time as a correctional chaplain, essentially to work with  
14 the Muslim population at the California Men's Colony in San Luis  
15 Obispo, California. I liked San Luis Obispo, but I wasn't able  
16 to remain there because the chaplain's salary could not afford  
17 for me to live there.

18 [Sound of cell phone ringing.]

19 MR. ABDULMAJEED: My phone rings. Excuse me. I  
20 was supposed to turn it off.

21 [Laughter.]

22 MR. ABDULMAJEED: I usually turn it off before I  
23 go into the institutions, but this is not an institution, but it  
24 is an institution.

25 [Laughter.]

26 CHAIRMAN PERATA: Thank you for your generous  
27 appraisal.

28 [Laughter.]

1 SENATOR ASHBURN: This is more of an asylum.

2 [Laughter.]

3 MR. ABDULMAJEED: So, I was hired as a full-time  
4 correctional chaplain at the California Men's Colony in San Luis  
5 Obispo. I regrettably left that beautiful area, and I returned  
6 to take a position, a similar position, at the California  
7 Medical Facility in Vacaville, California, which I was working  
8 for over a period of two years before I was hired as the  
9 commissioner on the Juvenile Parole Board. I think it was the  
10 13th of February, 2007.

11 I also held onto a newspaper article that had a  
12 quote in it from yourself at that time. I think Mr. Davis,  
13 Chief Davis, was being considered for Adult Parole. And there  
14 had been a consensus that there needed to be more diversity of  
15 the types of backgrounds on the parole boards. And  
16 consequently, I came from the clergy, and I think you expressed  
17 an appreciation that the Governor had begun to move in the  
18 direction of what the hopes and wishes were for the Senate.

19 Thank you for your indulgence. I've enjoyed  
20 working in state service. I continue to like my work, and I'll  
21 be happy to answer any of your questions.

22 I thank all of you, Senator Padilla, Senator  
23 Dutton, and Senator Ashburn, for your calendaring the meetings  
24 in your offices so I could get acquainted with you.

25 I'd be happy to answer your questions.

26 CHAIRMAN PERATA: Members? Senator Dutton.

27 SENATOR DUTTON: Just a couple of questions.

28 You obviously have a really tough job because



1 you've got to make decisions that not only affect the life of  
2 the juveniles that are in the system, but also the people once  
3 they're released and go into --

4 MR. ABDULMAJEED: I have multiple constituencies.

5 SENATOR DUTTON: Yes, you do.

6 I curious, you have a lot things that you take  
7 into consideration when you're making a determination. Does the  
8 Board ever get involved in any kind of follow-up surveys, or  
9 anything, to determine what's happening once they are paroled  
10 and they're turned back out, the success of reentry at this  
11 point? Do they keep any records or anything like that, that we  
12 could look at to kind of help ascertain the success or failure  
13 of our system?

14 MR. ABDULMAJEED: The California Youth Authority,  
15 now known as the Division of Juvenile Justice, has a number of  
16 records that they keep on certain aspects of what it does.

17 Whether or not they have records on the incidence  
18 or percentage of recidivism, I'm not absolutely certain. But  
19 personally as a commissioner, I do try to follow-up as much as I  
20 am allowed to by the law with the young people that were in my  
21 process in terms every considering their parole. I do that as  
22 much as possible.

23 SENATOR DUTTON: It would just seem to me -- and  
24 if I'm wrong in the way I'm thinking about this right now,  
25 please tell me -- but it just seems to me if I was having to  
26 make these kind of critical decisions, that I can hear the  
27 reports about what we're doing for them and why they're in the  
28 system, but it'd certainly give me a certain amount of comfort



1 to know that they actually did work once they're back out in  
2 society.

3 I guess I'm a little concerned that that  
4 information isn't made available to you so you can actually have  
5 a feeling of comfort that some of these programs that you're  
6 using to make your discussion actually are working.

7 MR. ABDULMAJEED: In my work in alcohol and  
8 drugs, there was one thing that we always were serious about,  
9 and that was what we called follow-up studies or evaluation,  
10 outcome evaluations of the services that had been rendered, and  
11 how the people had responded to it.

12 I would welcome an opportunity to either have a  
13 computer of my own by which I was able to track such data as you  
14 are asking about, or something at the department level that  
15 would help me to better understand what were the ramifications,  
16 whether or not that young person that was paroled was  
17 subsequently successful on parole.

18 What I have now in terms of being able to  
19 determine that is if they appear before me again in a parole  
20 revocation hearing, where one or more of their conditions of  
21 parole has been violated by that particular young person that I  
22 had a concurrence on their subsequent parole. That's what I  
23 have currently.

24 SENATOR DUTTON: Thank you.

25 MR. ABDULMAJEED: You're welcome.

26 SENATOR PADILLA: I just want to take a couple  
27 minutes and ask about some of the logistical challenges of the  
28 job sometimes.

1                   When others who served in your or similar  
2 capacity come before the Committee, sometimes we talk about the  
3 time it takes per hearing, the time it takes to have a quality  
4 conversation for objective consideration, the time of  
5 preparation for each of the hearings.

6                   Can you talk a little bit about that? Are we  
7 getting you the information you need on a timely basis? Are we  
8 giving you complete information to make your decision? What's  
9 your workload like?

10                  MR. ABDULMAJEED: Thank you for that question,  
11 sir.

12                  My personal approach is to arrive at the  
13 institution mostly an hour prior to the actual hearing when it  
14 would begin, and to go over the reports about that person's  
15 institutional behavior, whether or not they have completed their  
16 educational program, whether or not they have completed their  
17 treatment programs, and also to look at what the recommendations  
18 are from the treatment team. That would be the parole agent,  
19 the psychological evaluation that would have been submitted by  
20 the clinicians who have worked with that youthful offender. And  
21 also to -- to sit and go over it some with my fellow  
22 commissioners, to look at the cases, and to get as much as  
23 information as possible in that hour that I can.

24                  Now in terms of what happens after that is, the  
25 commissioners will interview the young person. The time of that  
26 interview, it varies. Each case is different and is adjudicated  
27 on its own merits. Sometimes it's longer; sometimes it's  
28 shorter, depending on whether or not there are victim survivors

1 at that parole consideration hearing, and their letters and  
2 comments have to be recorded into the record.

3 Also, listening from the young person to try to  
4 determine if he's showing through his institutional  
5 documentation and through the recommendation from the treatment  
6 team, if he's shown a change, a positive change, in his value  
7 system, if he has remained gang entrenched, if he was  
8 subsequently a gang member when he entered the system, and what  
9 his relapse prevention plan is if he has substance abuse issues,  
10 and of course where he will go and what the support level he  
11 will have once he is subsequently paroled.

12 I think it's adequate.

13 SENATOR PADILLA: So, when you arrive at an  
14 institution, are you provided prior to the hearings program  
15 offerings and capacity of those programs at each institution?

16 MR. ABDULMAJEED: When we arrive at the  
17 institutions, the secretary or the staff there has already set  
18 in the hearing room all of the files that we are to hear.

19 SENATOR PADILLA: Those are the files of the  
20 individuals.

21 What I'm says is for the institution itself, how  
22 do you know what programs are or not offered at each  
23 institution, and what the capacity is of those programs?

24 MR. ABDULMAJEED: Well, I spent formerly five  
25 years at the California Youth Authority in the late '90s as a  
26 loaned executive, and primarily in the Stockton complex. I  
27 worked and consulted in four of those facilities there. And  
28 when I came back, it felt like I was returning home.

1                   So, what I did was, I went back and began to tour  
2 the facilities again. And the board, as a matter course,  
3 conducts some of its hearings -- over the period of a year,  
4 we've had three thus far in Stockton at three different  
5 facilities -- conducts our hearings within the institutional  
6 setting itself, where some of the wards are there from the  
7 programs to ask the board members about issues that they have  
8 with relation to: How they can become parole ready; what's  
9 going on in juvenile justice reform, and things of that nature.

10                   So, there is an opportunity that I take initially  
11 on my own initiative to -- to become more congruent with the  
12 current tenure of the institutions itself.

13                   SENATOR PADILLA: I just want to make sure we're  
14 not setting kids up to fail. If we're suggesting to them that  
15 participating in X program would help them lead to favorable  
16 consideration this time or the next, that that program's  
17 actually being offered. And if it is being offered, that it's  
18 not to maximum capacity and there's a waiting list, if you  
19 follow what I'm saying?

20                   MR. ABDULMAJEED: I can understand your concerns,  
21 Senator, because I, too, believe that if we create -- how would  
22 I put it -- if we create an insurmountable barrier between the  
23 youthful offender and civil society that he can never achieve,  
24 then that would counterproductive in our relationship with  
25 reform as well as trying to rehabilitate the young people.

26                   But currently, in working with the educators  
27 there, what we do, the commissioners in Juvenile Justice, we  
28 have a first annual and a second annual, which is an opportunity



1 about a year prior to the when the young people is going to  
2 appear before us for a parole consideration, we look at his  
3 institutional behavior. Has he had too many DDMSSs, Disciplinary  
4 Decision Making actions against him? Is he doing well in  
5 school? Has he enough credits to get that GED and to go on and  
6 get that diploma? What's his institutional status? Is he like  
7 B or C status, B status or A status, A being the highest status,  
8 meaning they are programming well and seemingly internalizing  
9 the treatment, training, and education that's provided for them.

10 SENATOR PADILLA: Thank you.

11 MR. ABDULMAJEED: You're welcome.

12 SENATOR ASHBURN: Thank you.

13 I enjoyed our conversation. I just want to ask  
14 you about your methodology, your personal methodology, in trying  
15 to make a determination on the likelihood of the success of the  
16 juveniles if they are granted a parole.

17 How certain are you? And what criteria do you  
18 use in making your determination?

19 MR. ABDULMAJEED: The ultimate criteria is to go  
20 by the guidelines that are set forth in Title 15. But also is a  
21 process that I was trained on by experienced commissioners prior  
22 to beginning to chair hearings myself.

23 The criteria in Title 15 is 30 different factors  
24 or elements to be considered, but I'll just give you 5 of them  
25 that I tend to dote on.

26 One, the degree and level of involvement of that  
27 particular young, youthful offender in that particular  
28 committing offense. That's what I look at, and I question them



1 about that until I'm satisfied that they either were  
2 subsequently deeply entrenched and involved in it, or it was  
3 just a small amount.

4 And the second thing that I look at is whether or  
5 not they were in fact in the community and now, within the  
6 institution, involved in a gang, if they are a gang member. And  
7 if they are a gang member, are they a shot caller, are they a  
8 soldier, are they a foot soldier, or are they just a want-to-be,  
9 so to speak?

10 And the third thing I look at is, what has their  
11 institutional behavior pointed toward? Have they begun to  
12 understand that they earned their way in through their  
13 criminality, and through their gang involvement, and through  
14 their predilection for violence? And have they begun to earn  
15 their way out by doing the things that will help them back --  
16 become a good citizen again, to become good in a family  
17 situation again, and good in the community again, such as their  
18 education, such as renouncing gang activity and violence, such  
19 as have they begun to prepare a parole plan? Have they had  
20 family counseling that was available to them and their parents  
21 in terms of family reconciliation? If they had some mental  
22 indicators, such as if they were a sex offender or first or  
23 second degree murder, has there been a recent psychological  
24 evaluation completed by the clinicians on them? What does that  
25 tell me about their behavior and their adjustment in the  
26 institution, and the propensity that the clinician indicates is  
27 the possibility to reoffend in those areas?

28 So, these -- these are part of -- just a small

1 glimpse at some of the criteria that I look at.

2 And of course, I look at what the treatment team,  
3 the parole agent who's been working with that young person has  
4 to say, and sometimes we don't always agree with them. And I  
5 also, of course, want to hear from the young person as well.

6 SENATOR ASHBURN: And how certain are you in your  
7 own mind when you make your determination to either deny or to  
8 grant?

9 MR. ABDULMAJEED: Based on -- it's not just me in  
10 a vacuum. In murder cases it's -- and in sex offender cases,  
11 it's a minimum of two and most times three commissioners that  
12 are all talking, and questioning, and making queries of that  
13 young person.

14 Then once that's done, the three of us will get  
15 together and have an executive session. And we'll discuss the  
16 merits individually that we feel that this person has towards  
17 parole readiness or not being ready for parole. And we'll  
18 concur on that prior to bringing that person, their attorney,  
19 the witnesses, and everyone back in before we render a decision.

20 And so, I can't give you a percentage, but I  
21 would say that based on just assessing the merits of each  
22 individual case, weighing in the balance victim's impact,  
23 weighing public safety, weighing institutional behavior, and  
24 weighing the parole plans and the support for those at the  
25 community level, and whether or not the district attorney of  
26 that particular county is prepared to receive that ward back, I  
27 feel pretty, pretty certain in terms of my deliberation and my  
28 decision making with regards to either granting or denying

1 parole.

2 SENATOR ASHBURN: Thank you.

3 MR. ABDULMAJEED: Thank you.

4 CHAIRMAN PERATA: Anyone here in support? Come  
5 forward, please.

6 MR. BROWN: Hello, Senator, Members of the  
7 Senate Rules Committee.

8 My name is Chris Brown. I am the Legislative  
9 Liaison for the Association of Black Correctional Workers.

10 Our organization is in support of Askia Muhammad  
11 Abdulmajeed's appointment to the position on the Board of Prison  
12 Terms -- I'm sorry -- Board of Parole Hearings for the Division  
13 of Juvenile Justice.

14 He is a member of the Association of Black  
15 Correctional Workers in good standing, participates in many of  
16 our events, and his story is a powerful story that is very, very  
17 supportive of a board member who, we feel, is very worthy of his  
18 appointment.

19 CHAIRMAN PERATA: Thank you.

20 MR. GIVENS: Mr. Chair, Members, thank you for  
21 the opportunity. I'm Ron Givens. I'm the Executive Director  
22 for the Associated Chaplains in California State Service. And  
23 I'm here on the behalf of my organization.

24 I'm also here for Rabbi Book, our President past,  
25 President Emeritus Dafour Dan, and our current President Dave  
26 Skaggs. They're all chaplains at various institutions  
27 throughout the state.

28 I have personally worked with Abdulmajeed Askia

1 for several years as he served on the Executive Board of ACCSS  
2 as our parliamentarian, and I can speak to his intellect, his  
3 attention to detail, and his victory through his personal  
4 circumstances.

5 I know him to be a man of integrity, and one who  
6 will, to borrow your term, Mr. Chair, one who knows the  
7 definition of compassion, and one who uses those -- those things  
8 that he knows about life to make -- to walk the walk and  
9 actually do it.

10 He's a man dedicated to public service, way  
11 over-qualified for this position in my opinion, and I think it's  
12 a very -- it's a value to the state to have Mr. Abdulmajeed be  
13 willing to serve in the position.

14 We do recommend confirmation rapidly. Thank you.

15 CHAIRMAN PERATA: Thank you.

16 MR. MILLER: Good afternoon, Senators. My name  
17 is Donald Miller. I've appeared before you before.

18 I was a life prisoner after being a physician for  
19 many years. I got my law degree in prison, and I'm now work --  
20 I'm not a practicing lawyer. I will take the Bar Exam this  
21 year.

22 I work for two Southern California law firms and  
23 six attorneys who do parole hearings, and I do the work in the  
24 litigation of these cases. Thirty-three prisoners on whose  
25 cases I've worked have been released by the courts. These are  
26 cases contesting decisions by parole boards and by the Governor.

27 The attorneys that I work for and myself  
28 personally highly recommend the confirmation of Dr. Abdulmajeed



1 for two basic reasons.

2 Number one, he's completely qualified. One of  
3 the few candidates I've seen who was absolutely completely  
4 qualified by education and training to make the most important  
5 decision, public safety decision, as to whether the offender is  
6 likely to reoffend.

7 Senator Ashburn questioned him on that subject.  
8 That's the key.

9 Secondly, he's one of the few, if not the only  
10 one I've seen lately, for either Juvenile or Adult Parole Board  
11 that's totally qualified. He does not come from law  
12 enforcement. And the statute absolutely requires a balanced  
13 board.

14 So, you have an extremely qualified candidate,  
15 and we highly recommend his confirmation. Thank you.

16 CHAIRMAN PERATA: Thank you.

17 Anyone else? Anyone in opposition?

18 Seeing none, do you have family here, sir?

19 MR. ABDULMAJEED: Yes. My wife is pregnant right  
20 now, three months pregnant, and she's also a student at Cal  
21 State Sacramento, and she's in school at this time.

22 She was so stressed that she was stressing me  
23 out, so she decided not to come.

24 [Laughter.]

25 MR. ABDULMAJEED: I lobbied vigorously for her  
26 presence.

27 CHAIRMAN PERATA: Our reputation is just  
28 incredible.



1 I think I would agree that you are, on the face  
2 of it, vastly over-qualified for this job.

3 I was thinking if maybe you want to run whole  
4 prison system. I'm always recruiting. So don't answer now.  
5 Think about it.

6 MR. ABDULMAJEED: I appreciate that thought, but  
7 another time, another time.

8 CHAIRMAN PERATA: I get that a lot.

9 It's very rare that we have someone in a position  
10 like you're in whose own life is a demonstration of redemption.  
11 So, I'm just very pleased that you saw fit to enter into public  
12 service where you can share that directly with others.

13 So, I wish you well. I wish you well on our new  
14 family.

15 MR. ABDULMAJEED: Thank you.

16 CHAIRMAN PERATA: And with that, we have a motion  
17 to approve. Please call the roll.

18 SENATOR ASHBURN: Yes.

19 SECRETARY WEBB: Dutton.

20 SENATOR DUTTON: Not voting.

21 SECRETARY WEBB: Dutton Not Voting. Padilla.

22 SENATOR PADILLA: Aye.

23 SECRETARY WEBB: Padilla Aye. Ashburn.

24 SENATOR ASHBURN: Aye.

25 SECRETARY WEBB: Ashburn Aye. Perata.

26 CHAIRMAN PERATA: Aye.

27 SECRETARY WEBB: Perata Aye. Three to zero.

28 CHAIRMAN PERATA: We'll keep the roll open for

1 Senator Cedillo, but congratulations. You're out of here.

2 MR. ABDULMAJEED: Thank you.

3 CHAIRMAN PERATA: Call your wife.

4 [Thereafter, SENATOR CEDILLO

5 voted Aye, making the final

6 vote 4-0 for confirmation.]

7 CHAIRMAN PERATA: Okay, our final two guests are  
8 Mr. Kubochi and Mr. Prizmich, Sheriff. Once a sheriff, always a  
9 sheriff.

10 You grew up in San Leandro?

11 MR. PRIZMICH: I went to high school in San  
12 Leandro. I held the long jump record for a number of years.

13 CHAIRMAN PERATA: Ah, he remembered.

14 Do you want to go first?

15 MR. PRIZMICH: Would you like me to go first?

16 CHAIRMAN PERATA: Sure, please.

17 MR. PRIZMICH: My name is Mike Prizmich. I was  
18 -- grew up in San Leandro basically, and my parents died when I  
19 was relatively young, and I put myself through school, entering  
20 the workforce with the Bell Telephone System, working Oakland.

21 Once that was done, I decided that law  
22 enforcement was a calling. I went into the Oakland Police  
23 Department and worked there for about six years, decided perhaps  
24 a change of intensity was in order for me and my family, so we  
25 moved up to Amador County, which is a lovely county just south  
26 of here. Spent the remaining years of my law enforcement there,  
27 serving as Sheriff-Coroner for three terms in Amador County.  
28 Just prior to that, I was Undersheriff for four years.

1 Retired in December. During my law enforcement  
2 career, I served on two different commissions. The first,  
3 appointed by Governor Davis to the Off Highway Vehicle  
4 Commission; the second, the old Board of Corrections, now called  
5 the Corrections Standards Authority.

6 I retired in December of last year, and  
7 approximately two months after retirement decided that I needed  
8 more work, and here I am.

9 CHAIRMAN PERATA: You decided that or your wife  
10 decided it?

11 MR. PRIZMICH: It came along.  
12 So with that, I'm delighted to be here before  
13 you.

14 CHAIRMAN PERATA: Thank you.

15 MR. KUBOCHI: Good afternoon.

16 By way of introduction, my parents were raised  
17 during the Depression and were interned during World War II. My  
18 older sister was born in an internment camp. And based on my  
19 family's experience, I have a very strong sense of justice and  
20 fairness. I'm very intolerant of any form of injustice.

21 My family's legacy is one of hard work,  
22 perserverance, and a profound respect for the rights of others.  
23 Through their support and encouragement, I was able to attend  
24 law school.

25 Before my appointment as commissioner, I was a  
26 deputy district attorney and a deputy public defender here in  
27 Sacramento County. I was the first Asian American to be  
28 appointed supervisor in either the Public Defender's Office or

1 the District Attorney's Office.

2 Through my previous career, I have acquired a  
3 balanced perspective in judgment, and as commissioner, I'm  
4 committed to providing timely fair hearings. I assure you that  
5 as to all participants at suitability hearings, I provide the  
6 utmost of respect and dignity to them.

7 The jobs requirements of a commissioner are  
8 demanding, and I am fortunate to have the support of my wife,  
9 Sharon, who is present here today.

10 I humbly appear before you for confirmation this  
11 afternoon.

12 CHAIRMAN PERATA: Thank you.

13 For both of you, one of the things that jumps out  
14 always is the number of postponements. Particularly at a time  
15 when the state has no money, every postponement is burning  
16 cash.

17 So, why are there still so many postponements?

18 MR. PRIZMICH: Well, I know the -- there -- it's  
19 as much of a frustration for the commissioners, believe me, as  
20 it is for others that -- that view it from the outside.

21 I know for myself, when I conduct a hearing, the  
22 vast majority of the postponements that I entertain are requests  
23 coming from the inmate and their counsel.

24 Generally speaking, the postponements that I've  
25 experienced come as a result of reports not being completed.  
26 Predominately they're the psychological reports. They're one of  
27 the components of our evaluation for the inmate. And while not  
28 the only one, they are an important component.



1 And when a request comes from the inmate and  
2 their attorney for a postponement consideration because it's not  
3 timely submitted to them, or there is no psychological  
4 evaluation, I for one need to consider that very seriously.

5 MR. KUBOCHI: I concur.

6 In regard to do the issue of postponements, a  
7 substantial contributing factor that caused the delay is the  
8 psychological report's either not completed or are not served  
9 upon the inmate and the attorney in a timely fashion to allow  
10 them to prepare.

11 CHAIRMAN PERATA: Well, we've talked about this  
12 before, not with you but with others. We seem to be going in  
13 the wrong direction. It was three; now it's almost five, as we  
14 understand it.

15 Is it the lack of adequate staffing in this area?  
16 What the hell's going on?

17 MR. KUBOCHI: I'll address that.

18 Senator Perata, I believe that there are some  
19 significant changes that are being made at this time by the  
20 Board of Parole Hearings to address this issue.

21 Starting in September and October of this year  
22 [sic], the Board of Parole Hearings has taken over the function  
23 of scheduling. In the past, the Board of Parole Hearings had  
24 worked with each institution, and the institution contributed to  
25 the scheduling. And that's been changed over to a system in  
26 which the Board of Parole Hearings sets the schedule at each  
27 institution.

28 Concurrently, in December of this year -- excuse

1 me -- December 2007, at the leadership of Chairman Davis, a  
2 working group has been established in which retired annuitant  
3 deputy commissioners are now reviewing the cases set for hearing  
4 to determine whether or not all the paperwork, including  
5 psychological reports, are in the file and have been sent to the  
6 attorney and the inmate.

7 In addition, at this time the Board of Parole  
8 Hearings is in the process of hiring 30 additional contract  
9 psychologists to address the backlog issue.

10 CHAIRMAN PERATA: Well, the administration makes  
11 an appointment, and once we take action and in confirming those  
12 appointments, we're out of the game.

13 So, you can appreciate some of the ongoing  
14 frustration that we have, and it is not unique to the Department  
15 of Corrections, but it has certainly become more and more of a  
16 pattern.

17 And if the system itself is not doing the job,  
18 you've got to be our surrogates in saying that this is just --  
19 unless this whole thing is the just bull shit, you know, this  
20 whole process is a sham, in which case we could save a lot of  
21 money by getting rid of it.

22 I know there are a lot of people that don't  
23 believe anybody who's been convicted should ever get out,  
24 although thankfully, with DNA, we realized that sometimes we  
25 make mistakes.

26 I have a couple of questions for Mr. Kubochi.

27 MR. KUBOCHI: Yes, sir.

28 CHAIRMAN PERATA: One is, and I think this goes

1 to a question of judgment, there was a two-person panel at  
2 Soledad for an inmate Ronald Willis. And the Attorney General's  
3 Office tried to get a stay. In fact, the deputy commissioner on  
4 your two-person panel was the mother of the deputy attorney  
5 general.

6 When the inmate's attorney asked for exclusion  
7 because of a conflict, your response was that there was not a  
8 close enough relationship to create a bias. And I was told that  
9 you asked, "Do you believe you could be fair?"

10 Is that an accurate portrayal?

11 MR. KUBOCHI: No, sir.

12 The entire matter was addressed on the record. I  
13 placed Deputy Commissioner Blonien under oath.

14 The suitability hearings are governed by Title 15  
15 as well as the Penal Code. Title 15, Section 2250 contains the  
16 bias in regard to an impartial panel. Under oath, I addressed  
17 these issues. There were negative responses, meaning the  
18 criterion in regard to bias was satisfied as a matter of law.

19 I asked counsel if he wished to ask any questions  
20 in regard to Section 2250, and he wanted to exceed that  
21 criterion, which I felt was improper, as we are bound by Title  
22 15 and the Penal Code.

23 Under oath, the answers by Ms. Blonien did not  
24 establish the existence of bias.

25 CHAIRMAN PERATA: And there was no sense that  
26 this was a sort of, prima facie, a conflict because of  
27 relationship?

28 MR. KUBOCHI: No, sir. I addressed that

1 specifically on the record.

2 CHAIRMAN PERATA: One other instance that I found  
3 curious was, you seem to be a stickler for details. There was a  
4 hearing in which the tape had not begun.

5 MR. KUBOCHI: That's correct.

6 CHAIRMAN PERATA: And there was a question of  
7 just restarting the hearing, but you denied that. That was  
8 inconsistent with the policy? What was your thinking there?

9 MR. KUBOCHI: Sir, that case went through its  
10 entirety. All of the testimony and evidence was gathered. The  
11 case was complete.

12 When we started deliberations, the deputy  
13 commissioner indicated to me that the recording device had not  
14 been turned on. I indicated immediately that it would be  
15 inappropriate to conduct any deliberations because as a matter  
16 of law, the inmate is entitled to a transcript of that  
17 particular proceeding.

18 Upon deliberations on the issue, I analogized the  
19 situation to a mistrial, either civil or criminal. In a trial,  
20 jury trial, the jurors are the triers of facts, or the people  
21 who make the decision. The judge is there to assure fairness,  
22 and rule on evidence, but does not make a decision on the facts.

23 We, as a panel, are the people who make a  
24 decision as to the facts. We are the triers of facts, so to  
25 speak.

26 In a mistrial, a new juror would be brought in so  
27 that if there was an unrecorded portion of a trial, to assure  
28 fairness for everyone, you would bring in a new -- a new trier



1 of fact, a new jury.

2 And I used that analogy as the basis of  
3 postponing the hearing because if we had had a full subsequent  
4 second hearing with the same panel, my fear was fairness to the  
5 inmate in that the decision we reach, whether to grant or deny,  
6 could be infected by an accusation that we considered evidence  
7 from the full hearing that was unrecorded. And in a grant or  
8 deny, the inmate is entitled to a complete transcript, and a  
9 fair hearing, and a good record to protect the integrity of that  
10 decision, sir.

11 CHAIRMAN PERATA: And if you had it to do over,  
12 you'd do same thing?

13 MR. KUBOCHI: If you believe I made a mistake,  
14 what I would do, I would dot the I's and cross the T's. You  
15 noticed I'm a stickler for procedure and detail.

16 I did attempt to call Legal. I was not able to  
17 obtain an opinion from Legal. Therefore, I had to make a  
18 decision at the time.

19 CHAIRMAN PERATA: So given same set of facts --

20 MR. KUBOCHI: I'd call Legal, try to get a  
21 decision from them.

22 And once again, I did not exclude -- I did not  
23 make this decision unilaterally. I discussed it with the deputy  
24 commissioner, because I want to make sure that every avenue's  
25 looked at to assure the inmate a fair hearing and a decision  
26 that has integrity.

27 CHAIRMAN PERATA: Thank you.

28 Alex.

1                   SENATOR PADILLA: I appreciate the explanation  
2 you just gave, because I think it boils down to the exercise of  
3 your judgment, and now we're jurors to determine --

4                   MR. KUBOCHI: Yes, I understand.

5                   SENATOR PADILLA: -- whether that was the proper  
6 judgment or not.

7                   You'd spoken in my office earlier this week  
8 about, again, some of the logistics of performing your  
9 responsibility.

10                  Do you get files on a timely basis, the  
11 completeness of the files, hearings that are put over for  
12 administrative purposes or reasons? How do you all feel that's  
13 functioning?

14                  Parlay that with the time commitment on your  
15 part, not just for the actual hearings, but for preparation, et  
16 cetera, can you comment on those workload concerns?

17                  MR. KUBOCHI: The workload is extremely  
18 challenging from a physical and a mental point. That is, I  
19 believe, an undisputed fact.

20                  We receive our files the week before the week of  
21 the hearings. And I think I speak for all of us, we start  
22 reviewing those files on the weekend.

23                  I personally have never walked into a hearing  
24 without being prepared. I juggle my calendar and my personal  
25 time to make sure that I not only have the time to review, but  
26 I'm also physically able to conduct that week's hearing.

27                  I have, again, the support of my wife in  
28 accommodating these demands.

1                   And you have addressed a very important point.  
2   And as a board, we constantly discuss the workload and the  
3   demands on the workload, the process leading up to the hearing,  
4   to determine if we can improve on that process.

5                   But it is demanding. We -- I never spend less  
6   than 10 or 15 hours of my own time every week, reviewing the  
7   cases. I want to provide a fair hearing, and it's not -- I  
8   don't consider that a burden. I consider that a necessity for  
9   me to provide a good job on behalf of the inmate.

10                  MR. PRIZMICH: Well, I agree with Mr. Kubochi.

11                  I get the documents about a week ahead of my  
12   hearings. I usually spend Saturday morning, get up around 6:00  
13   o'clock, to review those. It's a quiet time for me, and spend  
14   the afternoon getting my personal things done.

15                  But I spend quite a bit of time going through  
16   the -- the documents. We find at that point, at least I find,  
17   if there are deficiencies, for example, psychological  
18   evaluations that are not included in my upcoming week, I'll make  
19   note of that. And then typically what I'll do, on the Monday  
20   drive down to whatever facility I'm going to, those areas of  
21   concern, I'll try to make a call to the Lifer Desk, which is the  
22   -- which are the individuals that assist us out of Records, to  
23   determine where the psych is if there's no psych; where the  
24   counselor's report is, if there's no counselor's report, to try  
25   to ferret that out.

26                  Not always is that successful. Sometimes you  
27   have to wait until you get down there and then look at the late  
28   packets.

1 But there are times, to answer your question  
2 specifically, there are times, no, we don't get all the  
3 information we really need to completely and comprehensively  
4 look at a case. We get them -- if they're available, we get  
5 them at the time we get there.

6 I'll spend, if it's a hearing later on in the  
7 week, I'll spend that evening after the hearings reviewing that  
8 to get prepared for the rest of the week.

9 Does that answer your question, Senator?

10 SENATOR PADILLA: That answers the question.

11 The point that I try to get to by asking the  
12 question is, are we dangerously to the point where the quality  
13 and the integrity of the hearing is compromised because of  
14 workload concerns, time issues, just physical demand issues  
15 because of the heavy workload?

16 MR. PRIZMICH: I think every commissioner will  
17 set his own standards.

18 I've never felt so tired that I could not -- if  
19 that's what you're asking about -- I could not move forward in  
20 an adequate, fair manner.

21 And if there are deficiencies in the file itself,  
22 those certainly are the ones that we consider for postponement  
23 after talking it over with the inmate and their attorney.

24 SENATOR PADILLA: Before an inmate,  
25 hypothetically speaking, who has met all that they needed to  
26 meet for favorable consideration by you, who's then postponed  
27 because we didn't get the right piece of paper into the right  
28 file and on time, they could argue their delay is unfair denial



1 for that time period.

2 MR. PRIZMICH: Yeah, and in many respects it is.  
3 I mean, it's hard for me to argue with that.

4 And if you'll look at any of my records, my  
5 personal records, if there is deficiency with regard to, say, a  
6 psychological evaluation that is not there, it's not been  
7 provided, we don't have that component of our evaluation, you'll  
8 see in my record that I have apologized to that inmate, because  
9 that is our responsibility. And I'll be straight forward with  
10 it and let them know.

11 SENATOR PADILLA: And part of our responsibility  
12 is trying to identify that. So, the spirit of the question is,  
13 how do we help you do your job to the best of your ability and  
14 out of respect to the fairness of those who come before you?

15 MR. PRIZMICH: Yeah, I think part of that has  
16 been addressed. BPH is doing some work there.

17 I think the other area --

18 SENATOR PADILLA: And scheduling is just one  
19 piece.

20 MR. PRIZMICH: Right.

21 The other area that would be, I think, helpful is  
22 that the commissioners themselves have identified this as a very  
23 problematic issue for them. So, while the Legislature has  
24 identified it, BPH has identified it and set in motion a number  
25 of things, hopefully, that will eliminate that.

26 The commissioners themselves are also -- I mean,  
27 we're the point guys out there, and we're also very concerned  
28 about it and aware of it as well.

1                   So, I think that ultimately that will produce  
2 something for us all that'll be beneficial.

3                   SENATOR PADILLA: And you've heard my concern  
4 with other appointees before us today in different capacities.  
5 We have our Governor proposing a 10 percent cut across the  
6 board. So, how do we continue to do the job with, at some  
7 point, less resources where we already have strains on the  
8 system that you just described? That is an ongoing concern.

9                   Senator Perata mentioned, we vote up or down  
10 today, and should you be confirmed by this Committee and the  
11 Senate as a whole, we don't get you back to hear your concerns  
12 or requests, officially anyway.

13                   But we'd hope to hear from you if at some time  
14 you feel that the environment that we're asking you to do the  
15 job in is sufficient to maintain that integrity and quality of  
16 the hearings.

17                   MR. PRIZMICH: I think the commission that you  
18 have before you now, not us two but collectively, the commission  
19 is a very vocal commission. My sense is that if there are  
20 problems, there's none of the commissioners that are shy about  
21 identifying those problems and voicing them.

22                   SENATOR PADILLA: Thank you.

23                   MR. PRIZMICH: Thank you.

24                   MR. KUBOCHI: If I might, I might add on, Senator  
25 Padilla, that consistent with Senator Perata's concerns, I  
26 concur with Commissioner Prizmich, in that this group of  
27 commissioners recognizes that we are responsible for more than  
28 just the hearing decisions, and that we must participate in a

1 dialogue with CDCR to make sure that the resources are  
2 available, to make sure that these proceedings take place in a  
3 timely manner.

4 In other words, we're not just going to sit in a  
5 passive situation and blame other people. We recognize the need  
6 to take an active role and to create that dialogue and  
7 communication, identify the issues, and participate with trying  
8 to find solutions for those problems.

9 CHAIRMAN PERATA: Senator Ashburn.

10 SENATOR ASHBURN: Thank you, Mr. President.

11 I want to ask Mr. Kubochi, we have a letter  
12 before us that makes a very serious allegation that your  
13 behavior in the performance of your duties is, quote,  
14 "offensive." And specifically cited is the Willis case, but  
15 another case is cited, not identified as to the parties, but the  
16 allegation is that you denied the opportunity for a counsel to  
17 ask questions.

18 Are you familiar with the letter that we've  
19 received?

20 MR. KUBOCHI: I received it Monday.

21 SENATOR ASHBURN: First let me ask you, was your  
22 behavior offensive?

23 MR. KUBOCHI: No. No, sir.

24 SENATOR ASHBURN: How could such an allegation be  
25 made?

26 MR. KUBOCHI: In that case, it was a circumstance  
27 in which the inmate was serving a sentence out of state. And  
28 these hearings are unique, in that the -- it is conducted by

1 telephone. The attorney is in the room. The panel members are  
2 in the room. And all the criteria and facts are discussed over  
3 the telephone.

4 In this case, a complete hearing was conducted.  
5 A decision was rendered.

6 After the decision was rendered, counsel asked  
7 for clarification as to some portions of that decision. I  
8 believe that I had answered those concerns.

9 I am a believer that there has to be some  
10 finality to the decision process. The situation occurred  
11 relatively early in my career.

12 I would say to you, sir, that I narrowly  
13 construed that statute permitting questions to the extent that I  
14 would not construe that statute and apply it in the same manner  
15 today. I have learned from that experience, and I believe it's  
16 parts of the growth process.

17 I assure you and all the Members of this  
18 Committee, I was not rude or offensive.

19 SENATOR ASHBURN: Is there any way that anyone in  
20 evaluating your performance on these two cases or others could  
21 conclude that in any way you disallowed a full and open  
22 consideration, or that you declined or denied the opportunity  
23 for questions and answers that would be useful in making your  
24 determination?

25 MR. KUBOCHI: I have never had a situation in  
26 which I have limited questions during a hearing by all  
27 participants.

28 I have stopped district attorneys from asking



1 irrelevant questions or improper questions, I will say that.

2 But I don't believe insofar as the inmate or the  
3 attorney asking questions, or being able to participate during  
4 the hearing, no.

5 SENATOR ASHBURN: I don't know a judge that does  
6 otherwise with respect to irrelevant conversation that might  
7 take place during a hearing. And you are acting, both of you  
8 and your colleagues, in the capacity of judge, and you have  
9 guidelines.

10 Let me ask you about your attempt to reach  
11 counsel on the Willis case. Can you give the Committee a fuller  
12 explanation? What effort did you make, and what response did  
13 you receive?

14 MR. KUBOCHI: In regard -- could you --

15 SENATOR ASHBURN: You indicated to Senator Perata  
16 that you attempted to reach counsel to give you guidance, and  
17 you were unable to reach counsel.

18 MR. KUBOCHI: No, that was on the case of the  
19 unrecorded testimony.

20 SENATOR ASHBURN: Okay, on the tape recorder.  
21 I'm sorry. I'm in error there.

22 MR. KUBOCHI: I called; I called.

23 SENATOR ASHBURN: And you were not able to reach  
24 counsel?

25 MR. KUBOCHI: No.

26 SENATOR ASHBURN: And this is the counsel that  
27 was assigned to your board?

28 MR. KUBOCHI: Yes.

1 SENATOR ASHBURN: Why were they not available?

2 MR. KUBOCHI: I don't know. I left a voice  
3 message and asked for -- I said I needed legal advice, and we  
4 had a particular problem, and to please call me back. And I  
5 didn't return -- I didn't get a return call.

6 SENATOR ASHBURN: Were you on the board at the  
7 time that, quote, "an error" was made by the full board in a  
8 matter that had been referred back to the board by the  
9 Governor? And as I recall it was Chairman Davis's very first  
10 hearing, very first meeting as Chairman of the Board.

11 And the action of the board was contrary to those  
12 actions that are within the authority of the board in the  
13 handling of the case.

14 Were you there at that time?

15 MR. KUBOCHI: I don't recall. I was appointed in  
16 January, on January 18th, 2007.

17 SENATOR ASHBURN: This probably happened prior to  
18 your time.

19 The reason I bring this up, and Chairman Davis  
20 here, is that Chairman Davis was acting as the Chairman of the  
21 Board. The full board was assembled. It was in the matter of a  
22 case where the Governor had overturned the decision and returned  
23 the decision back to the full board.

24 The board took action under Chairman Davis's  
25 leadership, and he was very seriously criticized, as was the  
26 board, for that.

27 What was absent at that hearing was counsel.  
28 Counsel to the board was not present, nor was the executive

1 officer present.

2 What this points up is that the arrangement that  
3 we have, where your board is a part of the Department of  
4 Corrections, and is dependent upon the counsel that is loaned to  
5 you from the Department of Corrections is untenable.

6 In the performance of your duties, you should be  
7 able to reach counsel, as you felt you needed to be guided with  
8 respect to the tape recording problem. Chairman Davis would  
9 have been significantly guided if legal counsel had been  
10 present.

11 I can't even conceive of the full board meeting  
12 and rendering high level decisions, and counsel and executive  
13 officer not being present in the room. I can't even conceive of  
14 that.

15 So, the point that I'm making, and it's not an  
16 action that you will initiative, but the sooner we separate the  
17 Board of Parole Hearings from the Department of Corrections and  
18 establish the board as an independent entity of state  
19 government, and to provide to you your own counsel, the better  
20 all of the interests of people of California will be served,  
21 including the inmates and those who represent the inmates. And  
22 I think some of these problems could be avoided.

23 I just want to ask you again with respect to your  
24 own judgments, are you confident that you can fulfill your  
25 duties and not have allegations that your behavior is somehow  
26 unprofessional, or offensive, or in any way diminishes the value  
27 of the service that you're attempting to provide?

28 MR. KUBOCHI: Sir, I am human. As a human, I

1 will make mistakes.

2 To fulfill my obligations to the highest level, I  
3 will always invite comments and criticisms and not take them  
4 personal so that I can improve my performance.

5 I feel very hurt about the attorney's comments.  
6 As I indicated to Senator Perata, I have learned from that. The  
7 attorney who wrote that complaint has appeared before me in  
8 subsequent hearings, and she has not made any comments about my  
9 decorum.

10 SENATOR ASHBURN: Thank you, sir.

11 CHAIRMAN PERATA: Senator Cedillo.

12 SENATOR CEDILLO: I'm sorry I was out of the  
13 room.

14 I'm a little concerned. I'm reading this letter,  
15 I guess it's an affidavit, Cheryl Montgomery, Attorney at Law.

16 MR. KUBOCHI: Yes, sir.

17 SENATOR CEDILLO: Are you familiar with that?

18 MR. KUBOCHI: Yes, sir.

19 SENATOR CEDILLO: She states that you had a  
20 hearing in which, I guess, the federal court had found him  
21 suitable for parole. And at the same time, you issued him a  
22 three-year denial. She indicates that she had never seen that.

23 Tell me what it means for the federal court to  
24 indicate that someone is suitable for parole, and what are your  
25 duties and obligations from that point?

26 MR. KUBOCHI: Yes, sir.

27 Ms. Montgomery was not present during the Willis  
28 case. Mr. Willis was represented by Attorney Pfeiffer.



1           The context of that circumstance was that his  
2           suitability hearing coincided with a federal court order in  
3           which parole had been granted by the federal judge. The State  
4           of California had never found Mr. Willis suitable for parole.

5           Pursuant to the court order, sir, we set a term  
6           for release as ordered by the court. However, in conducting a  
7           suitability hearing as part of the Board of Parole Hearings, we  
8           did not find Mr. Willis suitable.

9           And we did not mean to be disrespectful to the  
10          federal court order; however, we are a state entity, and the  
11          State of California had not found Mr. Willis suitable.

12          So, we complied with the court order, sir.

13          SENATOR CEDILLO: So, my question was again, what  
14          are your duties and obligations with respect to the federal  
15          court order?

16          MR. KUBOCHI: I complied with that. I was asked  
17          to set a term of imprisonment, which we did upon conducting the  
18          hearing.

19          SENATOR CEDILLO: That's what the court order  
20          asked you to do?

21          MR. KUBOCHI: That's all -- that's all the order  
22          was to do, and we -- we set a term of release. We did not do an  
23          order in contradiction to the court order.

24          It came to us having been granted parole with an  
25          order to set a term of imprisonment, which we did at that  
26          hearing.

27          Mr. Willis was provided a full transcript of the  
28          hearing, as required by law.

1                   SENATOR CEDILLO: So, you're saying that order --  
2 what did the order say?

3                   MR. KUBOCHI: It said -- the federal court order  
4 said:

5                   "This Court, having granted parole  
6 to Mr. Willis, is referring the  
7 case back to the Board of Parole  
8 Hearings for the setting of a term."

9                   But that court order coincided with his next  
10 suitability hearing, and so we conducted a full hearing. At the  
11 conclusion of the hearing, that portion of the -- that relates  
12 to the federal court order, we set a term of release. So, we  
13 complied with the court order.

14                  But in regard to the State Board of Parole  
15 Hearings finding him suitable, we found him not suitable. The  
16 prior panel had found him not suitable also.

17                  So, it's a unique --

18                  SENATOR CEDILLO: So, you're suggesting this is a  
19 jurisdictional question, that the order from the feds gives no  
20 direction to you, or you have no duty or obligation in terms of  
21 how you conduct or evaluate him as a state entity.

22                  MR. KUBOCHI: Because that court order did not  
23 preclude the conduct of the suitability hearing that was on a  
24 separate track, sir. And as I've indicated, the Board of Parole  
25 Hearings had never found Mr. Willis suitable for parole. So our  
26 -- the actions we had --

27                  SENATOR CEDILLO: You differed. The state board  
28 differed with the federal board.

1 MR. KUBOCHI: That is correct, sir. And so, our  
2 findings were not inconsistent with any previous finding of the  
3 Board of Parole Hearings, but we also complied with the court  
4 order issued by the federal court.

5 Otherwise, we would have been found in contempt,  
6 which we were not.

7 SENATOR CEDILLO: Did his counsel seek or suggest  
8 that you guys were in contempt?

9 MR. KUBOCHI: Sir, he walked out of that hearing  
10 before all of this happened. He and his client walked out of  
11 the hearing. So, I can't speak for -- I can't speak for  
12 counsel.

13 CHAIRMAN PERATA: I believe the counsel's here.

14 [FROM THE AUDIENCE]: I am here.

15 CHAIRMAN PERATA: We're now going to ask for  
16 anyone in support of the two appointees.

17 MR. KATZ: Thank you, Senator Perata.

18 My name is Stewart Katz. I'm an attorney in  
19 private practice.

20 Most of my professional interaction with Stan, in  
21 fact all of the professional interaction, has been an adverse  
22 situation.

23 It sort of surprises me in a sense that he's  
24 being portrayed as a stickler for procedure for procedure's  
25 sake.

26 I've always found him to be someone who is  
27 genuinely concerned with fairness in a substantive real sense.  
28 He's someone who is very conscientious about his job. He

1 doesn't just proceed like a plow horse with blinders. He tries  
2 to look at the big picture. And over the course of years, I've  
3 seen him come up with better ways in how to look at things.

4 He's an empathetic individual. In the criminal  
5 court system, which is how I met him, he's always been someone  
6 who listens. May not agree most of the time. I've probably  
7 been on the other side of him on cases, we don't agree. But  
8 he's always been respectful. He's always been respectful of the  
9 courts. He's honored the court orders in court, whether it's  
10 for or against him. In trial, he's a straight -- he's an honest  
11 person.

12 I mean, I don't know what you're looking for as a  
13 commissioner, but if you want someone who is going to be  
14 empathetic, who's going to be fair, who's going to exercise  
15 judgment in the tough decisions, and I'm sure these are tough  
16 decisions -- I've got friends who do death penalty work for  
17 the -- defending people accused, facing the death penalty.  
18 These are the type of cases where emotions go very high,  
19 understandably, for the advocates on both sides; life sentences,  
20 these are very serious matters. There's a lot of passions  
21 involved.

22 But Stan Kubochi is someone who truly tries to do  
23 the right thing, who tries to do it in a better way.

24 I understand, people apparently, he pointed out  
25 as I'm listening to this, and I don't have, obviously, access to  
26 whatever happened in this Willis case, but pretty obviously he  
27 wasn't held in contempt by the federal court, which leads me to  
28 believe that he complied with their order. It may have been a



1 difficult situation. It sounds like he did the best he could do  
2 with that situation.

3 I just urge you to approve him. I think you  
4 won't be sorry if you do that. I think you'll find that he's  
5 someone who doesn't simply go along with a floundering  
6 system, but someone who will try to look around and find a better  
7 way to do things.

8 Thank you.

9 CHAIRMAN PERATA: Thank you.

10 Anyone further?

11 Anyone in opposition to either of the appointees?

12 MR. PFEIFFER: Yes, thank you, Senators. Rich  
13 Pfeiffer.

14 I was the attorney on the Willis case. I was  
15 before Mr. Kubochi on two different cases. Both of them just  
16 happened to be published opinions.

17 These opinions are -- what they were is, inmates  
18 file what's called a Writ of Habeas Corpus, which is like an  
19 appeal of the denial of parole at these hearings. And it works  
20 its way, just like an appeal would, through the courts: first  
21 the state courts then the federal courts.

22 And when a court order comes down, that is the  
23 law in the case. In the Willis case, it was a published federal  
24 opinion. So not only was that the law in the Willis case, but  
25 it was also the law regarding any similar situation in the State  
26 of California in any of these parole cases.

27 And what happened at that hearing is not quite  
28 what you've heard here today. It started off with the deputy

1 attorney general vigorously trying to have that hearing stayed.  
2 The court order -- and it was asked, what does that court order  
3 stay?

4 I've got the last paragraph here and I could read  
5 it quickly. It says:

6 "Willis' Petition for Writ of  
7 Habeas Corpus is granted. Having  
8 decided the petition will be  
9 granted, the next issue concerns  
10 the proper remedy.

11 "Because Willis has never  
12 been found suitable for parole, the  
13 BPH has never moved past the  
14 suitability finding function in  
15 California Penal Code Section  
16 3041(b) to calculate a term and  
17 set a release date as required by  
18 3041(a). It is now time to do so.  
19 Within 30 days of the date of this  
20 order, the BPH must calculate a  
21 term for Willis and set a date for  
22 his release in accordance with the  
23 requirements of California Penal  
24 Code Section 3041(a).

25 "This does not necessarily  
26 mean that the release date must  
27 occur within 30 days of the date  
28 of this order, but rather the BPT [sic]

1 must act within that time limit.

2 "Within 40 days of the date  
3 of this order, the Respondent must  
4 file a notice with the Court  
5 identifying the date set for  
6 Willis' release."

7 The only issue that the federal court made that  
8 the BPH had to comply with was to calculate and set a parole  
9 date for Mr. Willis.

10 The federal court found that, after reviewing all  
11 of the evidence, that there was no evidence to show that his  
12 release would cause an unreasonable risk to public safety, and  
13 therefore, the law says he has to have a parole date set.

14 Now, Mr. Kubochi said that the federal law didn't  
15 apply, but yet he -- he went and he set a parole date consistent  
16 with that order.

17 Now, if the federal law doesn't apply, why did he  
18 do that? That's an inconsistent answer on his part today.

19 And he didn't -- that's not the big problem  
20 here. It started off with the deputy attorney general fighting  
21 to stay this hearing --

22 SENATOR CEDILLO: Excuse me.

23 He said the reason he did it was because there  
24 were these concurrent tracks.

25 I'm just telling you what he said, because you're  
26 saying that he was motivated by the federal decision.

27 What he's expressed is that it appears his belief  
28 was that there were concurrent tracks, and that the federal

1 decision did not apply, that he could release him, I don't know  
2 how, and at the same time sentence him. And so, he did two  
3 concurrent things that had the effect, the frustration of, from  
4 my observation, the frustration of what the intent was of the  
5 federal decision.

6 MR. PFEIFFER: And here's the answer to that is,  
7 I think he's mistaken. And that was addressed at the hearing.  
8 It should be contained within the transcripts.

9 I read the court order into the transcripts, and  
10 I asked that he comply only with that order.

11 And his response was, "I can't calculate a parole  
12 date without holding a new parole hearing."

13 I objected to that because if the Governor were  
14 to reverse the grant of parole, he would be limited to what was  
15 brought and entered into evidence at that parole hearing.

16 The parole hearing at issue that the federal  
17 court looked at was in 2003. I wanted no more evidence to come  
18 into the record that the Governor might be able to consider, or  
19 might be -- and also, I had no notice that there would be a new  
20 hearing. All I had was the federal court order telling me that  
21 a parole date was going to be calculated. And they have a  
22 matrix, and they go through this, and they -- it's a very  
23 mechanical thing, and they calculate a date.

24 Mr. Kubochi said that he needed this hearing to  
25 determine which date to calculate. And I would have taken the  
26 high term in every one because Mr. Willis had served more than  
27 enough time on the high term in every category. So, that's not  
28 quite accurate.



1           The other thing was, when I questioned whether  
2 the deputy commissioner who appeared, and we found out was the  
3 attorney general's mother, I asked to question her regarding a  
4 bias that was presented. And Mr. Kubochi said that because I  
5 couldn't show an actual bias, he wasn't going to let that  
6 questioning go forward.

7           And there's a case, Corning vs. Superior Court,  
8 done in 2001, which allows you to question commissioners when  
9 there is an issue of bias to get down to is there really a  
10 conflict here or not.

11           But the concluding statement that the  
12 mother-daughter relationship doesn't undermine the public, and  
13 the law on that is that you don't need proof of actual bias.  
14 What you have to do is show that if the public at large, aware  
15 of all the facts which fairly entertain doubts concerning the  
16 judge's impartiality, disqualification is mandated. The  
17 existence of actual bias is not required.

18           And Mr. Kubochi disagreed with that  
19 interpretation, and he can't.

20           What troubles me is, he's an attorney. And he  
21 understands that a federal published opinion is the law. And to  
22 hold a new hearing and then today tell you that it coincided  
23 with a regularly scheduled hearing when none of that is going to  
24 be in your transcripts, I have some extreme concerns about.

25           Additionally, if this was it, and he would just  
26 say that inmates cannot get paroled unless I say, you know what?  
27 I made a mistake. I take full responsibility for what I did.

28           And until they do that, there's no way that any

1 parole board or any court is ever going to release them. It's  
2 troubling that Mr. Kubochi is not doing that today. He's human.  
3 He said that, and he can make mistakes. And had he just said  
4 that he made a mistake, you know, that could be forgiven.

5 There was another case I had with him in re  
6 Barker. In re Barker is also a published case. It's still  
7 published. It's still good law. It's binding on the rest of  
8 the state. And it was remanded for the same thing as Willis  
9 was, to set a date. And the deputy commissioner at that hearing  
10 didn't agree with the court order and voted against parole. So,  
11 it went to the en banc hearing.

12 At the en banc -- and the commissioner at that  
13 hearing said, "I am mandated by the court order to grant  
14 parole," and he did.

15 At the en banc hearing, the entire panel voted  
16 for parole pursuant to the court order, and basically they had  
17 no option.

18 Mr. Kubochi abstained from that vote. There were  
19 no "No" votes, because that would have been a direct violation  
20 of the court order.

21 But why would he not go along with his  
22 colleagues, by court order, and vote for the grant of parole?

23 To me, he has demonstrated that he's unwilling to  
24 follow the law. And these two cases are published cases; they  
25 are the law.

26 The law says parole should normally be granted.  
27 It's the rule and not the exception. And when you look at these  
28 numbers, and you see his conduct, I can't help but have

1 concerns.

2 I'm here to answer any questions. I know I'm  
3 giving you conflicting information than what Kubochi did.

4 I wrote a declaration the day after the hearing.  
5 I've got it here. I was troubled by it. You're welcome to it.  
6 It's under oath.

7 CHAIRMAN PERATA: Thank you, sir.

8 Questions?

9 Anyone else? Mr. Miller.

10 MR. MILLER: Good afternoon again. Thank you for  
11 this opportunity to speak to the Committee.

12 I've already introduced myself.

13 I would like to just take few minutes in the  
14 first half, address some of the concerns that the Committee has  
15 raised.

16 First of all, the postponements. The word  
17 "bullshit" was used, and that's really what they -- what governs  
18 this, what's going on here.

19 These are not the fault and not requested by the  
20 inmate or inmate's attorney, and they're not the fault of the  
21 institution. It's the fault of the Board of Parole Hearings,  
22 who still today, after this Committee has been expressing these  
23 concerns for at least three years, has no system in place  
24 whatsoever to ensure that the psychological evaluations when  
25 they're required are done in time for the hearings.

26 And I say "when they're required," it's because  
27 there really is no requirement for a psychological evaluation,  
28 but it is useful.

1                   The board still hasn't -- it's the board's fault.  
2   And I wish somebody on the board would take the responsibility  
3   for it.

4                   Secondly, the notion that a deputy attorney  
5   general who's opposing the parole of a particular inmate, whose  
6   mother is on a panel to decide whether that inmate should get  
7   parole or not, is not an overt conflict of interest is so  
8   absurd, and when it's done by a former prosecutor, it's  
9   absolutely incredible.

10                  Thirdly, when a court -- the federal court only  
11   ordered -- and I did the briefing in both Barker and the Willis  
12   cases, by the way -- when a court orders the board set a parole  
13   date, you don't even need a hearing to set a parole date.

14                  But for a panel to defy the court and say, "Well,  
15   we're going to determine whether he's suitable or not," after  
16   the court saying he's suitable as a matter of law, is exactly  
17   what's going to bring the board down.

18                  You already know that the federal courts have set  
19   up a receivership and taken over complete control of the  
20   Department of Corrections' health system.

21                  They're going to the parole board if this keeps  
22   going on. And the people of the State of California, whom you  
23   represent, will no longer have any say in who paroles and who  
24   doesn't.

25                  The third thing I'd like to address is the actual  
26   qualifications of the two gentlemen before you, and this has  
27   nothing to do with their integrity, their great work in law  
28   enforcement.



1           But I believe that the action of this Committee  
2 is governed by Penal Code Section 5075, which requires not only  
3 -- governs not only the Governor's nominations, but the  
4 affirmations by the Senate that the appointments shall reflect a  
5 cross section of the state's geographic, economic, gender, et  
6 cetera, cross section.

7           We have a board that consists almost entirely of  
8 law enforcement, former law enforcement. The subject whose  
9 parole are being judged -- their eligibility for parole being  
10 judged, were arrested by these people, testified against by  
11 these people, prosecuted and put in prison by these people.  
12 This is what we have. We have a police commission.

13           We don't have a parole board of people, former  
14 judges, psychiatrists, psychologists, people who are really  
15 qualified.

16           But mainly, it doesn't meet the cross section  
17 requirement. It violates the statute that your predecessor  
18 Senate enacted that statute.

19           And there shouldn't be any choice here. Neither  
20 of these gentlemen fulfills the statutory requirement, so the  
21 answer should be no.

22           SENATOR CEDILLO: How so? Articulate that. Be a  
23 little more specific --

24           MR. MILLER: There is no cross section here.

25           SENATOR CEDILLO: Let me finish.

26           The expectation is that the board reflects a  
27 diversity, and not just geographic, or ethnicity, but a  
28 diversity of various fields; right? That's what you said.

1 That's our understanding.

2 So, how is it that these two gentlemen do not  
3 reflect that?

4 MR. MILLER: We don't have any representation on  
5 this board by the middle or lower class.

6 We don't have any representation on the board by  
7 the state's largest industries: labor, or farming, or anything.

8 We just have former policemen, with one  
9 exception.

10 SENATOR CEDILLO: And how does that apply to  
11 these two gentlemen?

12 MR. MILLER: Because they don't fulfill the  
13 criteria. We already have a board that consists almost  
14 entirely --

15 SENATOR CEDILLO: They don't fulfill the  
16 criteria because --

17 MR. MILLER: They don't represent -- they  
18 constitute a board which violates the statutory cross section  
19 requirement.

20 And by continuing -- and this Committee affirmed  
21 every single current parole board commissioner. And it's  
22 continuing to do that.

23 And I'm saying that that is absolutely contrary  
24 to the statute. And the board should be governed by this --  
25 this Committee should be governed by the statute.

26 If it doesn't -- now, you know the fiscal status  
27 of this state. We have 25,000 life term inmates, of whom about  
28 5,000 like myself have been adjudged by the state's

1 psychologists, who are hired for this purpose, not to pose any  
2 further risk to public safety, or a moderate risk, a low risk,  
3 or the same risk as the average citizen.

4 The two gentlemen before you today, in their one  
5 year or so of service, in the hundreds of hearings they've  
6 conducted, only one of those inmates has paroled.

7 It costs the state \$30-40,000 to house people who  
8 are not a public safety risk. That's about a quarter of a  
9 billion dollars a year. It just doesn't make any sense.

10 I'm respectfully asking the Committee to do  
11 something that I don't think takes a great deal of courage.  
12 Twice before, you've told me to my face that you would talk to  
13 the Governor about this, but talking to the Governor I don't  
14 think is the Committee's duty.

15 I think the Committee has to look at each  
16 commissioner, see if he's qualified or she is qualified, and if  
17 it doesn't fit the statutory requirements, and they don't have  
18 education or training to predict recidivism, and they conduct  
19 themselves contrary to law the way one gentleman here today has,  
20 I think that the Committee by law should say "No." It should be  
21 a very simple thing until the Governor gets the message and  
22 starts appointing a cross section of qualified people, and the  
23 board gradually works its way out of the situation.

24 So I and the attorneys I work for highly  
25 recommend that despite their great service in law enforcement,  
26 that these individuals not be confirmed as a commissioner of the  
27 Board of Parole Hearings.

28 Thank you.

1 CHAIRMAN PERATA: Thank you.

2 Yes, sir.

3 MR. WATTLEY: The day is late, I recognize. I  
4 think I'm the last. I don't know if that's a relief for you or  
5 not. I assume it is.

6 My name is Keith Wattley. I'm the Managing  
7 Attorney at a little office called UnCommon Law. We represent  
8 prisoners and a lot of different prison issues, but we focus  
9 right now on parole consideration hearings, and legal  
10 proceedings challenging unlawful parole decisions by this board  
11 and by the Governor.

12 I'm also the lawyer on the case you might have  
13 heard about. It's called in re Rutherford, sometimes called in  
14 re Lugo. And it involves the board's failure to provide timely  
15 hearings. It involves a lot of these due process issues about  
16 untimely packets, psychological evaluations, notices. There are  
17 a whole lot of issues that are involved in the case.

18 A lot of fundamental problems with the board's  
19 operations have been uncovered and discovered throughout the  
20 almost four years of that litigation.

21 When the court certificated the class action in  
22 2004, prisoners were suffering from undue -- overdue hearings,  
23 and there were thousands of hearings that were late.

24 Unfortunately, that hasn't changed. If you go  
25 back even before that, you had some efforts around 2000-2001, is  
26 when Senate Bill 778 was enacted, which allowed the board to  
27 conduct more hearings because it only required two panel members  
28 instead of three. The board lauded that as this is how we're



1 going to fix this backlog problem, without ever looking at any  
2 other proactive ways to change how they operate. They said,  
3 "We'll conduct more hearings. That'll fix it."

4 It didn't happen. In fact, the backlog  
5 skyrocketed to more than 3,000 cases overdue, overdue by years  
6 in some cases, not just days, or weeks, or months.

7 Then we had another effort, legislative effort,  
8 in conjunction with the Governor's Office and his reorganization  
9 plan in 2005, which added more commissioners to the board. It  
10 bumped it up from nine to twelve hearing adult cases. Again,  
11 another effort not to change the fundamental way the board  
12 operates, but to increase the numbers and try to process more  
13 cases more quickly. And it still hasn't had the desired impact.  
14 There's still more than 1200 hearings that are overdue today.

15 I think it's a lot more than that. That's a  
16 conservative estimate. We're in the process of trying to figure  
17 out what the full scope is.

18 What the efforts that have been undertaken by the  
19 Legislature and the one effort by the Governor's Office have  
20 failed to address is the fundamental problem, and I have to say  
21 I'm disappointed it hasn't been discussed here.

22 And that is, the main thing that has to change  
23 about the way the board operates is, they actually have to let  
24 people out sometime, and they're not. The law says they must,  
25 but they don't. And I think the law is pretty clear.

26 I'm not a political guy. I see things pretty --  
27 pretty clear, and so forgive me if I'm not sophisticated in how  
28 I see things or talk about things, but if you have a board that

1 grants parole rarely, and you have prisoners who go to parole  
2 hearings have a less than one percent chance of ever being  
3 released as a result of what happens in that hearing, there's a  
4 problem.

5 The law says they're supposed to be released, and  
6 they're not. And you have commissioners -- it is hasn't been  
7 really a topic today, but I've seen many of these confirmation  
8 hearings where the commissioners come, and they defend their  
9 record of the few parole grants they actually give.

10 You have Commissioner Kubochi, and you have  
11 Commissioner Prizmich who respectively have grant rates of two  
12 percent and five percent. And that's far away from what the  
13 statute requires, but it's in line with what the rest of the  
14 board does.

15 So, I'm here to oppose their confirmation on this  
16 board not because of anything personal about them. I have  
17 appeared before both of them, and you know, frankly it doesn't  
18 matter whether I like them. What matters is that they're not  
19 following the law, neither is the rest of the board. I oppose  
20 all of them.

21 And more importantly, so should you. It's the  
22 Legislature who said normally grant parole in these cases. So  
23 when they come to you having not done that, you shouldn't  
24 confirm them.

25 Again, I see things pretty clearly in that  
26 respect.

27 Other things that come up are, they've talked  
28 about, and you've talked about postponements. I know that

1 Senator Padilla asked about postponements, and board packets,  
2 and things like that.

3 And Dr. Miller put it right on the head, you  
4 know. This is not prisoners saying, "How do I get my hearing  
5 off the calendar?" Prisoners want to go home. If it's a less  
6 than one percent chance, it's better than the chance I got  
7 sitting in my cell, so I want my hearing to go forward.

8 The board can't get its act together to pull  
9 together the documents that are necessary to go forward with the  
10 hearings.

11 And I want to talk about something particular.  
12 If it's a resource issue, if it's because they don't have enough  
13 staff at the institutions or at the board, among their  
14 psychologists or elsewhere, in the Rutherford case, we actually  
15 have a unique opportunity to fix that, because we have a court  
16 order that says:

17 "If the board cannot do its job  
18 due to a lack of resources, I ..."  
19 meaning the Court,

20 "can order them to hire appropriate  
21 resources."

22 Now, I'll just tell you, the board is generally  
23 not forthcoming in saying, we need more resources. So, I would  
24 invite you to have them report to you, what do you need? What  
25 do you really need? What kind of positions? What kind of pay?  
26 What do you need? And if I have that and I show it to the  
27 court, we'll get it.

28 But they're not forthcoming about that because,

1 again, they don't have any interest in changing the way they  
2 operate on a daily basis.

3 Another thing that concerns me, we sort of get  
4 caught up in the confirmation process where it's -- you know  
5 there are a lot of pats on the back, and people have served very  
6 long and distinguished careers. I don't take anything away from  
7 that at all.

8 But the bottom line, if they're not following the  
9 law, you cannot confirm them. And you have to look at what it  
10 is they actually do. And if they're not following the law, I  
11 mean, it becomes a pretty simple thing, I think.

12 One thing you have to keep in mind. You're the  
13 people who ultimately decide: Do we keep these people; do we  
14 allow them to keep breaking the law or not? And I say you  
15 can't.

16 And having had a lot of experience with the  
17 board's operations in the recent years, I'm always happy, if  
18 you're ever interested, in sharing my insights into what I see  
19 as some of the problems. And I invite you to be checking in  
20 with the board about what's happening.

21 One other thing about the caseload, we had to get  
22 an order from the superior court to have the board find out why  
23 its commissioners resigned. They didn't know and weren't going  
24 to ask. Fault me. I said, "Judge, have them report."

25 "No, we don't need to look at that. We don't  
26 know, but we're sure there's nothing we can do about it."

27 We have commissioners who -- you really had one  
28 -- I don't know if you've had one recently who serves a full



1 three-year term. They leave. I believe it's related to  
2 workload. Find out from them. They now have to do that.

3 But they're not interested in actually trying to  
4 solve these problems on their own, and I think the Senate Rules  
5 Committee is the first step to say, you know, "You folks aren't  
6 really towing the line as we laid it out."

7 I mean, the Legislature wrote the law, and  
8 they're obligated to follow it. So as I said, this is not about  
9 a personal thing, but it's about what's right and what's wrong.  
10 And I see these things pretty -- pretty black and white.

11 That's my view. I'll just close with, I  
12 understand. Since attorneys in my office represent prisoners at  
13 parole hearings before these commissioners that there is a real  
14 risk that they will take it out on my client, that I've come in  
15 and said bad things about them. And I have some concerns about  
16 that.

17 But, I mean, at the end of the day the person's  
18 not going home anyway. They're not persuaded by anything to  
19 grant parole, so it doesn't really matter.

20 But I think it's worth considering these issues,  
21 and I don't think they've been really considered.

22 CHAIRMAN PERATA: Thank you, sir.

23 MR. WATTLEY: Thank you.

24 CHAIRMAN PERATA: Anyone further?

25 SENATOR DUTTON: I wasn't going to say anything,  
26 but now I'm going to with regards to this.

27 And I appreciate what everybody's concerns are  
28 here, but on May 7th, 2007, there was a parolee that raped,

1 slashed the throat of a 33-year-old woman during a home invasion  
2 robbery and killed the woman's 58-year-old mother-in-law. The  
3 grisly crimes were witnessed by the 33-year-old woman's 2 and 4  
4 year old sons. All these crimes took place in my district in  
5 Riverside County.

6 This individual in 1998 pled guilty to various  
7 felonies and so forth and ended up paroled in -- he didn't  
8 parole in 2004, but he was a recent parolee.

9 I appreciate that people feel that individuals  
10 are entitled to redemption. I don't have problem with that. I  
11 agree, too.

12 But the reality is, I cannot support anything  
13 that could possibly put anybody, any innocent person, at risk.  
14 So, I'm sorry if people feel the system isn't fair. But I can't  
15 -- I can't -- I just can't do it, okay, and I'm sorry.

16 So, if you feel that they're too tough, I  
17 apologize to everybody, but I just can't be any other way than  
18 to make sure that people respect the rights of the victims.

19 CHAIRMAN PERATA: Anything further?

20 SENATOR ASHBURN: I'll move the confirmation.

21 CHAIRMAN PERATA: I'm going to ask that they be  
22 split.

23 SENATOR ASHBURN: Sure. I'll move Mr. Kubochi  
24 first.

25 CHAIRMAN PERATA: Well, I think I probably share  
26 the frustration that was expressed by those in opposition. I've  
27 been doing this now for almost three years. It feels like three  
28 hundred years.

1           This system is just awful. And it's almost  
2 impossible to get your arms around it. The postponements, in my  
3 mind, for whatever reason they're being done, postponements are  
4 a waste of money. And it's very interesting what people mind we  
5 waste money on.

6           You can criticize a Caltrans worker standing on a  
7 shovel. That's a waste of money.

8           But postponing a hearing is a somehow acceptable  
9 waste of money. I don't get it.

10          I think that the training is -- particularly I'm  
11 much more impressed with the Juvenile side than I am on the  
12 parole side. There does not seem to be the same kind of  
13 training adequacy in the adult system, for reasons that are  
14 unclear to me.

15          I don't know what hell we have to do to get psych  
16 evaluations done in a timely manner. As I said, we're going in  
17 the wrong direction. For whatever reasons, it's not being  
18 helpful. If you do things in a timely manner, if you have the  
19 psych evaluation, you have a fair hearing, I don't think  
20 anybody's got any argument at all. You go up, you go down.

21          I do think that there is pretty clearly not a  
22 cross section. Not your fault. You guys were both in law  
23 enforcement. You spent your careers doing that.

24          I think there's a natural bias in this  
25 administration -- as in many other administrations. The  
26 previous guy was a Democrat. He wasn't any better -- to  
27 continue to keep the deck stacked.

28          I'd like to see a Jesuit or somebody on there.

1 Well, maybe not a Jesuit.

2 You know, 3 out of 548, the law of averages is  
3 the probably better than that.

4 So, I'm very frustrated by this. And as a  
5 practical matter, we are not going to hear any more of these  
6 confirmations after today until we start seeing some kind of a  
7 change. The burden will fall directly on the Governor's Office  
8 to either make changes in the way in which they appoint people,  
9 and those people reflect that they're not going to put up with  
10 this or not. But it seems to me to be imprudent and impractical  
11 to go beyond this.

12 So after today, we just won't have any. If the  
13 Governor's folks would like to come by the office and chat about  
14 that with me, I'd be more than happy to do it.

15 On the current nomination, I have gone through  
16 the transcripts, and I am concerned about fairness. And some of  
17 the give-and-take in the transcript over the Willis case seemed  
18 to be unduly terse and argumentative, and even to the point  
19 where I know you had points where you say you respectfully  
20 disagreed, but at other points you said, "I don't care if you  
21 stay or you don't stay."

22 The back and forth, I thought, probably I'd  
23 expect that here, but in a quasi-judicial setting, I don't.

24 So, I won't be able to support your confirmation,  
25 sir, but I think it's the overall system here that is in  
26 question.

27 And we do have culpability; Mr. Miller is right.  
28 If we don't do this, who will? It's clearly not going to happen



1 unless we do.

2 With that, call the roll, please.

3 SENATOR CEDILLO: Let me attach myself to the  
4 comments of the Pro Tem, and add that I share in that  
5 frustration. We have been at this for a very long time, a  
6 couple of years, trying to get conformity with what we believe  
7 the law is.

8 It seems to beg the question: What part of legal  
9 don't you understand?

10 And if this entity and this body is supposed to  
11 be a representative body, and yet the only people who get  
12 appointed to this body are people who have spent significant  
13 parts of their careers, if not their entire careers, trying to  
14 put people in jail and keep them in jail, then it's  
15 counterproductive.

16 And if it's not legal, then what part of legal  
17 don't we get?

18 I mean, I don't want to be redundant, but it just  
19 doesn't make sense to only put on an entity that's supposed to  
20 evaluate people to determine whether or not people are prepared  
21 to reenter society, that the only persons on that would be  
22 people who, the entire existence of their professional lives or  
23 overwhelming parts of their professional lives, have been to  
24 keep people in jail. It skews the viewpoint, and it appears to  
25 be inconsistent with what the mission and what the law requires.

26 So, if the Governor doesn't understand that part,  
27 clearly our frustration is that we have a difference of that.  
28 Clearly, it seems on us duty-bound -- and I applaud you, Don

1 Perata, Mr. Pro Tem -- that we should not hear these any more,  
2 because I'm not prepared to vote for any of them anymore, and  
3 mistakes shouldn't be made.

4 And I would also caution that my colleague,  
5 Mr. Dutton, someone was let out inappropriately and shouldn't  
6 have been let out. Even when we let somebody out we make the  
7 mistake; right?

8 Yet my understanding was due to budget concerns,  
9 we're we prepared to let 20,000 people out, or 22,000 people  
10 we're going to release. We're not going to release them through  
11 a process that requires prudent evaluation of each individual  
12 case.

13 But Mr. Dutton, you must have fear about the fact  
14 that we're going to let 22,000 out for fiscal concerns, for  
15 fiscal concerns.

16 SENATOR DUTTON: The people we're talking about  
17 here, with all due respect, are serving life sentences.

18 SENATOR CEDILLO: They all start somewhere.  
19 Before they got to life, they started somewhere. I mean, I'll  
20 guarantee you, that wasn't their first breach of the law.

21 So, we're prepared to release 22,000 without any  
22 evaluation or consideration of their appropriateness for reentry  
23 into society.

24 And then on the other hand, we're holding people  
25 at tremendous cost to us. So, it just seems that the entire way  
26 of us approaching this seems to be broken.

27 As I said, I'm not prepared to vote for any of  
28 them anymore at this point.

1 SENATOR ASHBURN: Mr. President, several things.

2 First, Senator Cedillo seems to be asking for a  
3 response with respect to the Governor's proposal on the release  
4 of 22,000.

5 I, for one, have no intention of supporting that  
6 or voting for it. So, to put your mind at ease --

7 [Laughter.]

8 SENATOR ASHBURN: -- and the public's mind at  
9 ease on that point.

10 I am concerned about, Senator Perata, with all  
11 due respect, the idea that this Committee will no longer  
12 consider appointments to this board.

13 The people that you're going to be disadvantaging  
14 in that, I would say, arbitrary decision are the inmates  
15 themselves. There is currently one vacancy on the board, and if  
16 you deny confirmation to these two gentlemen, there will be  
17 three vacancies on the board. That means that fewer inmates who  
18 are eligible to be considered will have hearings.

19 The problems that exist, and I agree with you as  
20 I have stated many times during these hearings, and have  
21 presided over a working group for more than a year to try to  
22 identify areas of change and correction within the operations of  
23 the Parole Board, there are problems. There's no doubt about  
24 it.

25 But for this Committee to arbitrarily decide that  
26 there will be no further consideration of appointments only  
27 disadvantages those who would be eligible to have a hearing in a  
28 timely manner. I don't think that's what serves the best

1 interests of justice.

2 I understand the frustration that everybody  
3 feels, but I want to express that I don't agree with that  
4 decision.

5 CHAIRMAN PERATA: Further? Call the roll.

6 SECRETARY WEBB: Cedillo. Dutton.

7 SENATOR DUTTON: Aye.

8 SECRETARY WEBB: Dutton Aye. Padilla. Ashburn.

9 SENATOR ASHBURN: Aye.

10 SECRETARY WEBB: Ashburn Aye. Perata.

11 CHAIRMAN PERATA: No.

12 SECRETARY WEBB: Perata No. Two to one.

13 CHAIRMAN PERATA: So, that motion fails.

14 Then on --

15 SENATOR ASHBURN: Motion on Mr. Prizmich.

16 CHAIRMAN PERATA: Call the roll.

17 SECRETARY WEBB: Cedillo. Dutton.

18 SENATOR DUTTON: Aye.

19 SECRETARY WEBB: Dutton Aye. Padilla. Ashburn.

20 SENATOR ASHBURN: Aye.

21 SECRETARY WEBB: Ashburn Aye. Perata.

22 CHAIRMAN PERATA: Aye.

23 SECRETARY WEBB: Perata Aye. Three to zero.

24 SENATOR PADILLA: Vote Aye.

25 SECRETARY WEBB: Padilla Aye. Four to zero.

26 CHAIRMAN PERATA: Thank you both, gentlemen.

27 Senator Cedillo, you were out of the room when we  
28 took the vote on Mr. Abdulmajeed. We left the roll open.



1 SECRETARY WEBB: Senator Cedillo.

2 SENATOR CEDILLO: Aye.

3 SECRETARY WEBB: Cedillo Aye, four to zero.

4 [Thereupon this portion of the  
5 Senate Rules Committee hearing  
6 was terminated at approximately  
7 4:34 P.M.]

8 --ooOoo--

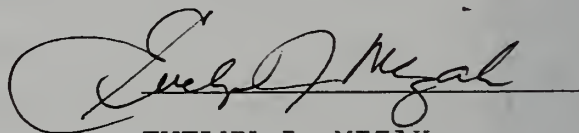
1  
2 CERTIFICATE OF SHORTHAND REPORTER  
3

4 I, EVELYN J. MIZAK, a Shorthand Reporter of the State  
5 of California, do hereby certify:

6 That I am a disinterested person herein; that the  
7 foregoing transcript of the Senate Rules Committee hearing was  
8 reported verbatim in shorthand by me, Evelyn J. Mizak, and  
9 thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said hearing, nor in any way  
12 interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand this  
14 22<sup>nd</sup> day of January, 2008.  
15  
16  
17

18   
19  
20 EVELYN J. MIZAK  
21 Shorthand Reporter  
22  
23  
24  
25  
26  
27  
28

APPENDIX

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28





**DEPARTMENT OF PERSONNEL ADMINISTRATION**

OFFICE OF THE DIRECTOR  
1500 "S" STREET, NORTH BUILDING, SUITE 400  
SACRAMENTO, CA 95811-7258



December 13, 2007

**REVISED**

The Honorable Don Perata, Chair  
Senate Rules Committee  
State Capitol, Room 420  
Sacramento, CA 95814

Dear Senator Perata:

Thank you for the opportunity to appear before the Senate Rules Committee January 16. I am honored to serve as the Chief Deputy Director of the Department of Personnel Administration (DPA) in Governor Schwarzenegger's Administration.

As the Chief Deputy Director, I am strongly committed to supporting DPA's goals as outlined by Director Gilb and our executive staff. One of these goals is to support the Human Resource Modernization Project, jointly sponsored by DPA, the State Personnel Board (SPB), and the Department of Finance (DOF). This effort will be accomplished through partnership and cooperation between our agencies, the unions, and the Legislature. I look forward to working together to accomplish these important goals.

**Statement of Goals**

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as deputy director of DPA? How will you measure your success?*

In support of Director Gilb's goal to lead the State in meeting our human resource challenges, my goals for DPA include the following:

- Support the HR Modernization Project
- Complete DPA's strategic plan, as well as workforce and succession plans
- Position DPA as a model department
- Elevate workforce planning as a management priority on a statewide level
- Transition DPA's classification and compensation division to HR Modernization and to performing an audit function

**Human Resource Modernization**

My success in moving this project forward can be measured by our progress converting thousands of employee classifications into broad occupational categories. We are actively working with the first group, state scientists, to roll out the first restructure within a year. DPA already has transferred several of its Classification and Compensation experts to HR Modernization and plans to continue supporting the modernization effort as a department-wide priority.

**Senate Rules Committee**

DEC 14 2007

**Appointments**

Once we've fully implemented HR Modernization, it will be possible to explain the State's job structure—including the qualifications to be hired, promotional options, and pay grades—using a simple grid for each of the major occupational categories. It will be much easier to hire college graduates, and the hiring times for all positions will be much shorter. By partnering early with the unions, we ensure employees as well as management have a stake in the new system's success.

### ***DPA's Strategic Plan, Workforce and Succession Plans***

DPA is putting the final touches on its strategic plan for 2008-2010. This "transitional" plan includes the executive staff goals for the department, initiatives we plan to complete over the next two years, and each division's operational plans to support these areas. This planning process has helped us identify changes we need to make as an organization; managing this change will be critical to our success in achieving our goals.

Our strategic plan is the first step in our department-wide workforce and succession plan. We are following our own DPA Workforce Planning Guide, posted on our website, as we work through the planning steps. Every division is participating. One of the exercises we're doing to support this plan is a zero-based budget drill to help each division analyze its work.

### ***DPA as a Model Department***

To position DPA as a leader and a model department, we must complete DPA's own strategic, workforce and succession plans, invest in DPA's own employees through training and mentoring, and develop DPA's own human resource personnel staff. Superior customer service has become one of our goals; we'll measure our success by the feedback from departments regarding how well DPA has helped them accomplish their missions. We hope to lead the way for other departments to follow our example. Being a model department means we always strive for the highest level of service possible.

### ***Workforce Planning Statewide***

Workforce planning is so important to DPA that we're taking a two-pronged approach to tackle the issue: long-term and short-term. HR Modernization is the long-term plan. Ahead of schedule, this project hired a Deputy Project Director for Workforce Management. This position will provide general direction over consultants and loaned staff. The incumbent will ensure all departments have current Strategic and Workforce plans, establish a central workforce planning function, and provide change management and performance management leadership. Originally planned to be funded and filled in FY 08/09, we felt the upcoming wave of retirements necessitated filling this position sooner in order to get the desired programs implemented as quickly as possible.

For the short-term, DPA and SPB are providing training for departments in workforce planning, participating on task forces, and offering consulting to departments. To kick off these interim solutions, DPA recently surveyed state departments and agencies to determine where they are in their planning efforts. This effort will be coordinated with the long-range plans of HR Modernization.



We're also active on other fronts to promote workforce planning. Last spring, the State and Consumer Services Agency created a task force that includes DPA and SPB representatives. SCSA also has sponsored a Best Practices website, which will be an excellent resource for departments to share knowledge and resources on workforce planning. DPA and SPB also participate on the Los Rios College District/CSUS Workforce Planning Committee. Its goals are to explore and address California government's workforce needs, creatively explore how the community college system can support us, create relationships, and commit to building programs that address our specific workforce needs.

In addition, DPA is participating in a workforce management conference in February, hosted by Senators Perata and Ashburn, to assess the magnitude of the challenges ahead and discuss possible solutions. DPA also is partnering with SPB and the Department of Industrial Relations to offer a Workforce Planning Workshop/Conference in spring of 2008. We plan an interactive workshop to help state agencies address their workforce planning needs.

#### ***Transform DPA's classification and compensation division***

DPA already has transitioned several of its high-level classification specialists to the HR Modernization program and intends to continue making changes within our classification and compensation division to support the HR Modernization effort. These changes will remove DPA from day-to-day classification activities by delegating those functions to the line departments' own HR offices. DPA's classification and compensation staff will transition to an audit capacity to ensure departments are properly performing these functions. Toward that end, we plan to increase training for department HR staff and create an audit unit within DPA to monitor and work with departments. We also plan to automate many time-consuming manual processes. We've created an automation manager position to spearhead this effort.

We believe the State's HR professionals should play a major role in workforce planning and development. We will provide more training to ensure these staff understand how to assess their departments' workforce needs and skills gaps, and how HR modernization will help them fulfill this planning and development responsibility. As part of this training, we received seven loaned personnel staff from departments to assist with the new compensation review process we initiated this year. These loaned staff are learning how to evaluate compensation proposals, and will transfer the knowledge they gain from this project back to their departments.

#### **Human Resources Modernization Project**

*As you know, with 35 percent of our workforce eligible to retire in the next five years, the state could face a loss of over 80,000 personnel in a short period of time. To address this challenge, as part of the 2007 Budget Act, the Legislature approved a \$2.8 million increase to the department for a new multiyear Human Resources Modernization Project, the overall goal of which is to increase the state's recruitment and retention capabilities. The first year of this effort includes the development of a comprehensive plan of reform that covers many issues, from recruitment and promotion to how salary calculations are conducted.*

*2. What is the status of the development of this comprehensive reform plan? Please also provide an update on the overall progress of the entire project.*

In partnership with SPB and DOF, we've recruited and filled the top management positions for the project (five CEA positions). This executive team has developed a project plan and timeline for the first year. (A detailed copy is attached.) So far, the team has completed the following project steps:

1. Appointed governance board members.
2. Received commitments or offers from 17 line departments to loan 20 positions for staffing the project.
3. Hired consultants to write an FSR (due late January 2008) for the automation component of the project.
4. Identified state scientists as the first occupational group that goes through the modernization process
5. Reached out to unions for project support.
6. Begun discussions with leaders of the 21st Century Project and Fi\$cal to ensure coordination with HR Modernization.
7. Started reviewing best practices used to reform the HR field, including automation components, in other states, including Washington, Georgia, North Carolina, Virginia, Wyoming, Arkansas, South Carolina, and Delaware.

The team has identified the following steps to be accomplished during the upcoming year as it works with the State scientists union and its members:

1. Identify the competencies required to perform the various jobs within this field.
2. Group these jobs in broad categories based on degree of difficulty.
3. Identify the value of the competencies required, and the corresponding compensation.
4. Develop automation needed to support the competencies-based structure.
5. Create an exam process aligned with the competency requirements of the class.
6. Establish the performance measures based on the competencies identified.
7. Bargain the new classification and pay elements.

While the project is in its infancy, a great deal of work has been completed in the first 90 days following staffing (as detailed above). The most important factor in the success of the project remains the support of the unions, employees, departments, the Administration, the Legislature and other parties interested in the hiring and retention of our state's workforce. We continue to meet with these parties to pursue their continued participation and support.

### **Workforce and Succession Planning**

*As noted above, the state faces an impending wave of retirement that will result in a significant loss of personnel over a short amount of time. In a June 2007 document entitled "California State Human Resources Modernization – Mission Statement and Goals," the department expresses a goal that all state departments have a strategic workforce plan.*



*3. What percentage of all departments have workforce plans?*

Based on a recent survey we did, about 33 departments have completed workforce plans or have plans in progress. (Our survey went to more than 133 agencies and departments; about 25% responded.)

*For those that don't have them, what are you doing to ensure they develop them?*

DPA works closely with SPB to provide current demographic information to departments to ensure they're aware of the impact of baby-boomer retirement trends on the State's workforce. We participate on task forces and we've posted DPA's workforce planning guide on our website, which walks departments through the steps of workforce planning.

As previously mentioned, DPA will participate in two workforce planning conferences. In February, Senators Perata and Ashburn will jointly host one of these conferences. DPA will provide our perspective and an overview of workforce planning. Also, in conjunction with SPB and DIR, DPA will present a workforce planning conference in the spring of 2008 to discuss with departments the importance of workforce and succession planning and to train the HR personnel who will draft the actual plans for their departments. We'll offer resource information and consulting services to departments.

Regarding the workforce planning model DPA has posted on its website, Cooperative Personnel Services (CPS) offers training for state departments that uses our model, as does SPB. We plan to expand this workforce planning model into a toolkit that will provide more assistance to departments by including a better resource section with links by subject, a FAQ section, information about training, and access to reports and sample analyses.

*4. Another goal stated in the above-cited document is to develop a leadership academy for state supervisors and managers and an academy for state human resources professionals. What is the status of these initiatives?*

The HR Modernization Deputy Project Director for Workforce Management will head up these training initiatives. Planning and research for the state supervisors and managers leadership academy is underway, under the auspices of the HR Modernization project. Once the team completes the initial research, it will collaborate with CSU and University of California partners, along with community college and other recognized training providers, to engage the resources needed to create a program that provides California's leaders with the knowledge and tools to meet state management challenges.

The development of a State human resources professional academy will serve as the vehicle to ensure that there is consistent communication and training as the changes occur statewide. This academy will enable human resources professionals to be change agents for their departments; consultants for new processes, including performance management; and to train others in basic and advanced HR system concepts and procedures.

These initiatives were slated for FY09/10, but due to the recognized urgency, they have been pushed up to 08/09. With the hiring of the project director for this area, the program component and necessary resources should be fully developed and identified well prior to the original schedule of September, 2009.

Once again, DPA and SPB are also providing interim solutions prior to the full development of HR Modernization. Supervisory training is currently administered by CPS Human Resources. CPS and SPB also offer many other training courses for supervisors and managers. Leadership for the Government Executive Program is sponsored by DPA, the Department of General Services, and the State Chief Information Officer, offered through the California State University. It prepares state executives and upper-level management to promote growth and develop solid working foundations within departments and agencies, create effective working environments, research and apply cross functional working relationships, and develop open communication environments relative to employee needs. Four groups have graduated since the program began in the Spring of '07. Three more groups (totaling 83 people) began the program this fall.

### **Simplification of the Classification System**

*The state currently has over 4,200 separate classifications, of which approximately 1,000 are vacant. Because of the large number of classifications, people trying to get jobs with the state find it difficult to match their skills and interests with state needs. The department's website and official documents state its goal to simplify this classification system.*

5. *What has the department done to date to simplify the state classification system? What else should be done? How is the department collaborating with the State Personnel Board on this effort?*

At least 200 of these vacant classes will be abolished by the end of February, and the remaining vacant classes will be abolished by the end of 2008.

The work leading up to abolishing these classes requires assessing any need for departments to retain a given class (due to reinstatement rights to it, for example) and notifying the affected union (along with the corresponding meet and confer obligations). SPB also needs to approve the decision to abolish.

Besides vacant classes, we're also looking at another crop of classes that may be candidates for elimination: 42 department-specific classes that are similar to the statewide Staff Services Analyst (SSA) class. DPA and SPB are reviewing these 42 classes to determine if their duties and compensation are similar enough to the SSA that the class may be abolished. We anticipate completing this project in the next 4 to 6 months.

While these interim steps are important, we need to complete the work outlined in the HR Modernization plan to truly simplify our classification system. One of the most important steps will be to identify the broad occupational groups that all the classifications fall under.

Once these occupational groups are identified—

- Prospective candidates will be able to easily locate the job(s) that meet their interests because common job names will be used.
- Employees will be able to identify the competencies required for a specific job.
- Career paths will be spelled out and easy to understand.
- Skills, abilities, and knowledge required for each job will be easier to identify.

### **Collective Bargaining**

*After collective bargaining agreements are ratified by the Legislature, the department signs many “side letters” with bargaining units. Side letters are addenda to ratified Memos of Understanding regarding any issue that has been collectively bargained.*

*6. What are the most common reasons for these side letters? What do you believe they tell us about the state’s collective bargaining process?*

While my position focuses on the administrative aspects of operating the State’s human resources program and does not include collective bargaining or labor relations, I certainly have some familiarity with the memorandum of understanding (MOU) addendum, or side letter, process.

In general, addenda to MOUs occur mainly when issues or human resource needs arise after an MOU has been signed. Changes to represented employees’ wages or working conditions must be bargained, so side letters are a necessary by-product of the changing needs of a dynamic workforce.

Another factor driving this process over the past year was the courts. A majority of addenda agreed to in 2007 involved salary increases ordered by the Federal Receiver for medical personnel employed in the Department of Corrections and Rehabilitation. These increases indirectly affected employees working in the same classes in the State’s mental hospitals, developmental services centers, and veterans’ hospitals. DPA worked with the unions representing these classes to achieve a level of salary parity necessary to prevent even higher vacancy rates in the non-CDCR departments (vacancy rates for certain classes were already high in some institutions prior to the CDCR increases). DPA’s labor relations staff continues to meet with the unions on these court-driven issues. There will likely be additional agreements reached in 2008 as a result of these ongoing discussions over salary equity.

Other examples of addenda agreed to in 2007 include correcting an error discovered in the employer retirement contribution schedule for Highway Patrol officers, extending a night-shift differential to two Office of Emergency Services employees who had been inadvertently left out under the MOU, and creating an incentive program for investment officers who work in the State’s retirement systems. In each of these cases, the issues or needs arose following ratification of the affected MOU agreements.

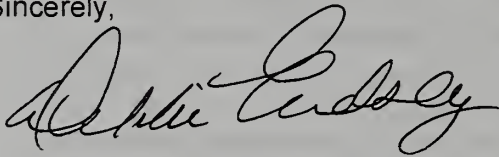


In the past, some addenda may have been agreed to outside the MOU process in an effort to avoid public or legislative scrutiny. However, legislation enacted in 2005 (SB 621) now ensures that all addenda requiring funding are presented to the Joint Legislative Budget Committee (JLBC) for review and comment. If so directed by the JLBC, DPA then presents these addenda to the Legislature in bill form for legislative approval. In 2007, the Legislature passed AB 754 and AB 756, DPA's first two sponsored MOU addenda bills.

As already stated, these addenda highlight the dynamic and changing needs of the State with regard to its workforce. It is simply not possible during negotiations on a contract to anticipate each and every need that will arise during the term of that contract. When vacancy rates rise or fall significantly, salary lags emerge, judges or arbitrators issue decisions, or a host of other issues arise, it may become necessary for the parties to meet and negotiate an agreement (i.e., addendum).

In closing, I am pleased to serve DPA, the State's workforce, and employers in the Schwarzenegger Administration. I hope these answers have addressed your questions. If there is anything else you need, please contact me at 322-5193.

Sincerely,



Debbie L. Endsley  
Chief Deputy Director

cc: Nettie Sabelhaus, Appointments Director  
Senate Rules Committee

Chris Kahn, Legislative Secretary  
Office of Governor Schwarzenegger

Michael Prosio, Chief Deputy Legislative Secretary  
Office of Governor Schwarzenegger



# California State Human Resources Modernization

---

## *The Right People in the Right Jobs*



June 2007

David A. Gilb  
Director  
Department of Personnel Administration

Suzanne Ambrose  
Executive Officer  
State Personnel Board



# California State Human Resources Modernization

**MISSION: Modernize and streamline the State's HR system to recruit, develop and maintain a well-qualified, high-performance workforce.**

Anyone who is familiar with State civil service or who has tried to get a job with the State knows how frustrating, confusing, and long the hiring process can be. We rely on a mostly manual system that has been in-place for more than 70 years. In that time, more and more regulations and legal requirements have been added, yet the system has not changed much. Currently, there are some ten steps an applicant must go through to get a State job, and each step has built-in time delays. If the right examination is not already in progress (or at least scheduled), it can take three years or more to land a job. Such an aggravating process is not good for recruiting qualified people.

Another reason people don't join State service is a compensation plan that does not reward employees for the value they bring to the organization. Over the last 25 years, State compensation has fallen significantly behind the compensation provided by other public and private sector employers in the competitive labor market. Our current compensation plan is too strictly structured to recognize individual employee contributions or an employee's self-development on the job.

Each of our State departments needs to do workforce and succession planning. We employ approximately 235,000 people. With over 35% of our workforce eligible to retire in the next five years, we could be looking at a loss of over 80,000 people. These are our most seasoned employees, those with institutional knowledge and high quality skills and abilities. Losing a large number of seasoned employees could devastate a department without the proper preparation and planning. We need to do more to support departments with their workforce planning efforts.

The strategic plan for HR Modernization lays out six specific goals – one goal for each of the five major components of the state's HR system (workforce planning, classification, compensation, recruitment/selection, and performance management) and a sixth goal to integrate the HR components so they work in concert. Each goal includes objectives with action steps and timelines for achieving the goal. Performance measures by which success or failure is to be evaluated are also included.

The plan proposes we convert State's current "duties-based" HR system into a "competencies-based" system, where all of the processes focus on the knowledge, skills, and abilities needed to get the work done.

## **CLASSIFICATION**

### **Goal: Simplify the classification system.**

The State currently has over 4,200 separate classifications (of which about 1000 are vacant). The class titles are not necessarily descriptive of the work to be performed. Because of this, it is often difficult for people trying to get jobs with the State to figure out what classes might be of interest to them and for which classes they meet the minimum qualifications.



Objective #1: Consolidate classifications into broader, usable occupational families. A large number of State classes are narrowly defined, have duties that overlap with similar classifications, share similar characteristics with other classes (e.g., minimum qualifications or duties), and are limited to single positions or are for a specific department. For example, there are twelve department specific Attorney classification series, all doing pretty much the same type of work. We also have 32 different Research Scientist classifications that are differentiated only by level and field of research. Other public sector employers have successfully collapsed their classifications into consolidated job families where prospective employees can identify the occupational area in which they wish to work. Group 1 (initial occupational group) consolidation is scheduled for completion by July 1, 2009. Remaining groups will be phased in over the next several years.

Objective #2: Establish occupational competencies for multipurpose uses including compensation. This is the key to the HR Modernization project. Competencies are measurable knowledge, skills, abilities and personal characteristics that are needed to perform in a job effectively. They are derived from the totality of tasks that may be performed by anyone in the job family. All other components of the HR system will be tied directly to the competencies that are identified for the consolidated job families. Specifically, defined competencies will provide the basis for compensation, recruitment/selection, performance management, and workforce planning. Competency benchmarks (proficiency standards) for the first classes in Group 1 are to be developed by July 1, 2009.

## **COMPENSATION**

**Goal: Compensate based on market conditions, individual self-development, and business needs.**

Prospective employees in today's labor market are not necessarily looking for a lifetime career with a single employer. Many expect to be hired and compensated for the knowledge, skills and abilities they personally bring to the job. The State's classification and compensation programs are too structured and inflexible to allow this. Additionally, in 2005, we conducted a total compensation survey and found that our compensation was generally well behind compensation paid in other public jurisdictions in California. Both of these factors contribute to our limited ability to successfully recruit the talent we need to provide high-quality public service.

Objective #1: Simplify the compensation structure and compensate employees based on individual contributions, self development, and the competitive market. As it currently exists, the State's compensation plan covers more than 4,200 classifications and includes over 300 separate pay differentials and 400 alternate salary ranges. With this number of variables, it is virtually impossible for anyone who is not thoroughly familiar with our pay manual to determine proper compensation for any given job.

With the support of the employee unions, we can design compensation plans that allow employees to be paid for their knowledge, skills and abilities, self improvement, and personal contributions to their employing agencies. Consolidation of classes into job families with wide salary ranges where salary advancement is based upon demonstrated proficiencies on the job is the key to this objective. Such a compensation plan can be set-up as a user-friendly program on the web where just about anyone is able to



determine their proper compensation by entering the specific requirements of the job (e.g., bilingual skills, drivers license, geographic location) and their own personal qualifications such as education level and job experience.

## **RECRUITMENT AND SELECTION**

### **Goal: Create an attractive recruitment and expeditious hiring process.**

Over one third of the State's workforce will be eligible to retire in the next five years. We must ensure that we can attract new employees with the required skills and knowledge to replace those who retire. We do not presently have a centralized recruitment program to meet these needs and our hiring process is primarily a manual, multi-step process with built-in delays at virtually every step. This drives away prospective candidates and sends them to employers who are able to hire quickly.

Objective #1: Develop an aggressive recruitment strategy to market California as an "employer of choice". This objective calls for us to develop a marketing strategy to sell the State as a desirable employer and to develop a centralized recruitment plan with continuous open (and automated) recruitment capabilities by July 1, 2009.

Objective #2: Shorten the selection and hiring processes. This objective will be completed simultaneously with Objective #1. The selection and hiring processes will be expedited greatly through the development of continuous on-line application and testing processes and by automating the certification process.

## **WORKFORCE PLANNING**

### **Goal: Tie HR systems to business needs through strategic and workforce plans.**

The purpose of this goal is simply to underscore the need to plan for the future. With few exceptions, such as construction projects, State planning is generally limited to the coming budget year or responding to the "crisis of the day". This goal emphasizes that we should be looking five years or more into the future – what services will State government and each agency be providing five years down the road; what specific knowledge, skills and abilities will be required to provide those services, and how will we acquire the people with those abilities.

Objective #1: All departments need to have current strategic and workforce plans. We will accomplish this objective by assisting agencies and departments to complete their strategic and workforce/succession plans. This step includes ensuring that BCPs are tied to these plans. The Project Management Office (PMO) will then be able to analyze skills gaps statewide to determine where the State, as an employer, is missing the skills needed to meet our goals and objectives now and in the future.

Objective #2: Identify and prioritize occupational groups for modernization. At a minimum, it takes several months to convert a single occupational group from "duties-based" to "competencies-based". So, we need to implement the proposed competency-based HR system on a staggered schedule with the highest priority groups being converted first. Skills gap analyses will provide the primary basis for prioritizing occupational groups. Highest priority for conversion will be given to groups where the greatest lack of skills exists in comparison to the Administration's program priorities. Initial occupational priorities have been tentatively identified as information technology,

scientists, and supervisors and managers. This schedule is to be developed by the PMO by the September 30, 2008.

## PERFORMANCE MANAGEMENT

### **Goal: Improve and foster a high performance culture.**

The primary purpose for employee performance management, which includes training and performance appraisal, is to improve both employee and organizational performance. However, within State service staff development is too often considered an expense rather than an investment that enhances employee value and increases organizational effectiveness. This goal will establish quality performance as a basic management objective for improving service to the public.

#### Objective #1: Require managers and supervisors to conduct performance appraisals.

Currently, employee appraisals are done irregularly, despite the requirements for annual appraisals and individual development plans. As we convert to a competencies-based HR system where performance will affect employee compensation, it will be essential that regular, objective performance assessments be prepared. This objective is to be accomplished by Executive Order, to be issued by October 13, 2008, that will require supervisors and managers to evaluate their staff regularly and identify training and development needs. Managers and supervisors will be held accountable in their personal performance appraisals for assessing their staff.

#### Objective #2: Design a performance planning and evaluation model for supervisors.

This objective provides the evaluation tool and process needed to implement Objective #1 for supervisor and managerial evaluations. It's proposed that supervisor and manager evaluations be tied to the annual budget cycle. The performance planning and evaluation model is to be completed by February 1, 2009.

#### Objective #3: Design performance evaluation and staff development models for represented employees.

This objective provides the evaluation tool and process needed to implement Objective #1 for rank and file employee evaluations. The development of any performance standards for rank and file employees will require the cooperation of management and the employee unions. This is due by May 1, 2009, for Group 1 employees.

#### Objective #4: Develop a leadership academy for State supervisors and managers.

Properly trained, informed and accountable management is the key to establishing a high performance culture in State service. This objective is intended to provide basic training for all managers and supervisors in creating a performance environment. The program component and necessary resources are to be fully developed and identified by September 1, 2009.

#### Objective #5: Develop an academy for the State's human resources professionals.

Modernizing the HR system will result in new roles and responsibilities for our HR staff. Proper training of HR staff in performance management will be critical to the successful creation of a high performance culture. Essentially, this objective will do the same for HR professionals as Objective #4 does for supervisors and managers. It is on the same time schedule as Objective #4.



## PROJECT MANAGEMENT: SYSTEM AUTOMATION, INTEGRATION & IMPLEMENTATION

### Goal: Create an Integrated Enterprise HR Solution

The HR Modernization plan is a system-wide effort that must be fully compatible with existing State systems, including the State Controllers Office 21<sup>st</sup> Century Project and the SPB Exam and Certification System. System-wide efforts must address automated systems development, culture change, training, statutory and regulatory changes, and audit capabilities. The establishment of a Project Management Office (PMO) to direct and oversee implementation of the strategic plan is vital to the success of the HR Modernization project.

Objective #1: Procure the resources needed to implement the Strategic Plan in the initial and subsequent fiscal years. The BCP needed to accomplish this objective has already been approved. The BCP provides funding needed to establish five positions in the PMO. It also funds a Feasibility Study Report (FSR) on automating the HR system and consultant resources for competency-model design and training on occupational analysis.

Objective #2: Develop an automated system architecture that is integrated and tied to core competencies. The project proposes to automate and integrate all of the individual HR system components so that they work in concert rather than in opposition to each other. There are a dozen or more specific processes that must be automated. Much of the required automation can be done through the modification of existing "off the shelf" software. We plan to complete an FSR for automation by January 1, 2008, and begin the Request for Proposal immediately thereafter. The plan is to complete automation by the middle of 2010.

Objective #3: Effect "change management". The HR Modernization project requires an enterprise-wide culture change. This change must come from the top and flow through our entire State system. This culture change will move us from the current system to an automated system where employees are hired, advanced, compensated, and evaluated based on achieved proficiency in defined job competencies. Everyone involved in the new HR system (applicants, employees, and management) must be educated on how the new system operates and the benefits of the change.

Objective #4: Develop training modules. State leadership and HR staff must be fully knowledgeable and skilled in the technical and conceptual aspects of the new HR system. This objective provides for the development of that training course and curriculum by July 1, 2009.

Objective #5: Develop audit requirements and tools. In order to ensure that the merit principle is maintained under the new system, specific areas of audit need to be identified. These areas include, but are not limited to, position allocation, screening of applicants, testing, and hiring interviews. The plan proposes that these audits be conducted by trained HR professionals and by control agencies (e.g., DPA, SPB, DOF). Development of these audit tools is scheduled for completion by the beginning of 2010.

Objective #6: Develop statutory and regulatory changes. The changes proposed for the HR system will require numerous statutory and/or regulatory changes. The PMO will need to identify all necessary statute and rule changes and will be responsible for drafting and processing those changes.





# HR MODERNIZATION TIMELINE

TASK	FY 2007-08				FY 2008-09				FY 2009-2010				FY 2010-2011				FY 2011-12				FY 2012-13				FY 2013-14				FY 2014-15			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
<b>Establish PMO (BCP)</b>																																
Est. positions & selection																																
Dev. Scope & charter																																
Dev. Proj. Mgmt. plan & timeline																																
Provide updates to sponsors																																
Provide updates to Adv. Brd																																
Survey depts implemented																																
Prov. feedback to stakeholders																																
<b>Goal #1 - Workforce Planning</b>																																
Issue Executive Order																																
Draft workforce plan(s)																																
Define resource needs for WFP program (BCP)																																
Dev. Rollout plan for Group 1 (ongoing for following years)																																
<b>Goal #2 - Classification</b>																																
Design competency model																																
Develop & conduct occupational analysis for Group 1 (ongoing for following groups)																																
Design classification job-leveling model for Group 1 (ongoing for following groups)																																
Identify competencies within occupational families for Group 1 (ongoing for following groups)																																
Consolidate job classes on basis of competencies for Group 1 (ongoing for following groups)																																
Develop competency benchmarks by occupational subgroups and levels for Group 1 (ongoing for following groups)																																
<b>Goal #3 - Compensation</b>																																
Design interim model compensation schedule																																
Establish model web-enabled compensation schedule Q1 (ongoing for following groups)																																
Develop salary movement stds																																
Competitive market database dev																																
<b>Goal #4 - Selection/Recruit.</b>																																
Dev. Marketing plan																																
Dev. Recruitment plan																																
Design prog & structure for open continuous recruitment																																
Est length of prob periods for Group 1 (ongoing for following groups)																																
Dev. Standardized selection model for Group 1 (ongoing for following groups)																																
Create continuous testing & cert models for Group 1 (ongoing for following groups)																																
<b>Goal #5 - Performance Mgmt</b>																																
Issue Executive Order																																
Create planning & perf appraisal model for Group 1 (ongoing for following groups)																																
Create sup/mgr training academy																																
Define resources for leadership academy																																



## HR MODERNIZATION TIMELINE

[illegible]





## Recruitment And Selection

	Milestone/Deliverable	Activities/Tasks	% Completed	Estimated Date
1	Develop steering committee network of HR staff involved in the recruitment and selection of scientists	<ol style="list-style-type: none"> <li>1. Compile a listing of HR contact persons in each of the departments that employ scientists.</li> <li>2. Review with each contact persons the current selection processes for scientists.</li> <li>3. Convene the first meeting of a steering committee comprised of the contact persons, and reconvene the steering periodically as needed.</li> </ol>	50%	1/31/08
2	Staff for marketing plan	<ol style="list-style-type: none"> <li>1. Create duty statement and announcement for a Marketing and Communication Manager, to report to the Deputy Project Director for Recruitment and Selection.</li> <li>2. Select a Marketing and Communication Manager.</li> </ol>	25%	1/31/08
3	Develop a "best practices" report of current selection processes in use for scientists	<ol style="list-style-type: none"> <li>1. Meet with contact persons in departments that employ scientists, and initiate discussion into the selection practices currently in use in departments.</li> <li>2. Publish a "best practices" report of how selection is currently conducted for scientists.</li> </ol>	40%	2/28/08
4	Review business functionality of the Examination Certification Replacement Project (ECRP)	<ol style="list-style-type: none"> <li>1. Attend and participate in November 8, 2007, ECRP steering committee meeting.</li> <li>2. Continue attendance and participation on ECRP steering committee as needed.</li> <li>3. Develop draft report reviewing in detail the business functionality of the ECRP.</li> <li>4. Develop final report reviewing in detail the business functionality of the ECRP.</li> </ol>	30%	2/28/08
5	Initiate a scientist examination involving a consortium of departments	<ol style="list-style-type: none"> <li>1. Use steering committee to encourage a consortium examination.</li> <li>2. Initiate a scientist examination involving a consortium of departments that employ scientists, or publish a report describing why such a consortium examination is not feasible.</li> </ol>	5%	3/31/08
6	Develop recruitment plan	<ol style="list-style-type: none"> <li>1. Compile a draft listing of elements to be included in recruitment plan.</li> <li>2. Identify the information technology component requirements of a recruitment plan for scientists.</li> <li>3. Identify elements of the ongoing marketing plan work that needs to be incorporated into the recruitment plan for scientists.</li> <li>4. Complete draft recruitment plan for scientists.</li> <li>5. Finalize recruitment plan for scientists.</li> </ol>	20%	6/30/08
7	Develop draft model for selection of scientists under HR Modernization	<ol style="list-style-type: none"> <li>1. Develop draft model of how scientist selection should take place under HR Modernization.</li> <li>2. Initiate a scientist examination based on the draft model.</li> </ol>	5%	7/31/08
8	Develop marketing plan	<ol style="list-style-type: none"> <li>1. Research and participate in ongoing state agency marketing projects (including but not necessarily limited to those already in progress for Water Boards and the CHP), and incorporate relevant elements into a statewide marketing plan for scientists.</li> <li>2. Complete development of a final statewide marketing plan for scientists.</li> </ol>	5%	9/30/08

## Classification and Compensation

	Milestone/Deliverable	Activities/Tasks	% Completed	Estimated Date
1	Determine first classification/s (Group 1) to be studied/converted to competency based model		100%	10/15/2007
2	Interim HR Mod Activity - Information Technology Classification and Selection Project	1. Develop DRAFT Information Technology Technician series specification, Alternate Range Criteria and allocation criteria. 2. Develop DRAFT IT Supervisor and Manager Series specification.	90%	1/1/2008
3	Design and develop interim compensation options for bargaining (draft salary grid) based on proposed model.	1. Hire & train staff. 2. Partner w/DPA Labor Relations staff to identify potential issues and strategy. 3. Analyze available compensation factors (i.e. any lags, labor market info, current pay differentials and alternate range criteria). 4. Identify pay factors for grid concept (i.e. education, licensure publications and/or certifications.)	10%	1/31/2008
4	Conduct baseline assessment of current class structure of Scientist classifications in BU 10 to identify logical sub groups.	1. Hire & train staff. 2. Set up database for input of information. 3. Review/verify salary relationship charts. 4. Verify historical vertical and horizontal salary relationships. 5. Review CAP's proposed consolidation of classifications. 6. Review job specifications for all classes in BU 10. 7. Create groupings by salaries, levels, common tasks and KSA's. 8. Create charts/tables of groupings. 9. Create definition of terms.	10%	2/15/2008
5	Identify best practices and General/Behavioral competencies	1. Define approach, methodology/protocol and data gathering strategies. 2. Identify and contact sources/other entities that have implemented competency based classification programs. 3. Inventory competency models/best practices. 4. Select common language/descriptors. 5. Create initial list of general/behavioral competencies.	15%	2/29/2008
6	Interim HR Mod Activity - Partner with DPA and CAPS to abolish unused Scientist classifications	1. Work with union to identify classes to be abolished. 2. Notify impacted departments. 3. Draft and schedule class abolishment Board Item.	10%	3/31/2008

## Classification and Compensation

7	Conduct competency model survey and complete competency assessments	<ol style="list-style-type: none"> <li>1. Develop approach and data gathering strategies.</li> <li>2. Hire &amp; train staff to conduct competency assessments.</li> <li>3. Identify resource panel members.</li> <li>4. Schedule and conduct data gathering events. (Resource panels/Focus groups).</li> <li>5. Conduct structured event interviews and validation surveys.</li> <li>6. Draft model and verify w/stakeholders.</li> <li>7. Input information into database.</li> <li>8. Develop survey instruments.</li> <li>9. Develop analysis tools.</li> </ol>	5%	3/31/2008
8	Interim HR Mod Activity - Information Technology Classification and Selection Project	<ol style="list-style-type: none"> <li>1. Draft Board Item to implement new classification structure.</li> </ol>	75%	4/30/2008
9	Compile and analyze data from focus groups/resource panels. Identify and code competency behaviors.	<ol style="list-style-type: none"> <li>1. Integrate data from all sources.</li> <li>2. Consolidate and analyze competency information.</li> <li>3. Prepare findings and recommendations.</li> </ol>		5/31/2008
10	Interim HR Mod Activity - Career Executive Assignment (CEA) Classification and Selection Project	<ol style="list-style-type: none"> <li>1. Partner with CEA Streamlining workgroup to develop new process, forms, etc for accelerated review.</li> </ol>	40%	6/30/2008
11	Design and Develop General and Technical Competency Model for Scientists	<ol style="list-style-type: none"> <li>1. Identify (a) competency clusters (b) job role definitions, (c) benchmarks &amp; levels.</li> <li>2. Prepare draft leveling criteria for competency models.</li> <li>3. Start initial development of Board Item to implement new classification structure.</li> </ol>		7/31/2008
12	Review with Stakeholders and Revise Models Based on Feedback	<ol style="list-style-type: none"> <li>1. Create/administer web-based content validation surveys.</li> <li>2. Analyze data.</li> <li>3. Incorporate findings/comments into draft models.</li> </ol>		9/30/2008
13	Finalize competency models	<ol style="list-style-type: none"> <li>1. Identify competency clusters &amp; technical competencies.</li> <li>2. Benchmark competencies benchmarks.</li> <li>3. Identify/complete leveling criteria, entrance requirements, career paths and performance measures.</li> <li>4. Finalize Board item.</li> </ol>		12/31/2008



### Workforce Planning and Change Management

	Milestone/Deliverable	Activities/Tasks	% Completed	Estimated Date
1	Workforce Planning Strategy Model	1. Identify key state workforce planning strategies to implement statewide. Workforce recommendations will be a key deliverable with this portion of the project. Project staff will work hand in hand with DPA's workforce planning manager. Will explore more details when Manager comes on board.	10%	6/30/2008
2	Change Management Model	1. Identify key change management issues and develop a model to address all aspects of change as a result of the project. Will explore more details when Manager comes on board.	0%	6/30/2008
3	Manager Supervisors Academy	1. Begin identification of key components to achieve training manager/supervisors.	10%	6/30/2008





**Senate Rules Committee**

December 13, 2007

DEC 13 2007

The Honorable Don Perata  
President Pro Tempore  
California State Senate  
State Capitol, Room 205  
Sacramento, CA 95814

**Appointment**

Dear Senator Perata:

Thank you for the opportunity to provide information to the Senate Rules Committee regarding both myself and the State Personnel Board. I look forward to answering any additional questions you, the other members of the committee, or staff may have.

**STATEMENT OF GOALS**

The State Personnel Board is the entity responsible for recruiting, testing, and training the state employee workforce.

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the State Personnel Board? How will you measure your success?*
  - Over the last decade I have had both the honor and privilege to serve in the public sector and have worked with extraordinary individuals who are committed to making this state great. As a member of the State Personnel Board, I intend to build upon the great work of those who came before me. California faces many challenges in the future, including retaining current state workers and attracting new individuals in the future to replace those who will be retiring. My goals are to actively participate as a member of the SPB to create a system that provides more opportunities for personal and economic growth to current state employees and attracts new employees to public service as the better alternative to private sector employment; to actively engage with our stakeholders and partners to develop a future system of recruiting state employees that is adaptive and meets the needs of a changing California; to protect the merit system which the citizens of California believed was of utmost importance when they voted to amend the state constitution to create the State Personnel Board; to have a system based on fairness and equity in hiring, promotion and discipline, and a system in which departments are held to the highest standards of integrity in their employment practices.
  - Measurements of success will be tangible and quantifiable. For instance, the success of the Human Resources Modernization project will be measured by

determining whether the goals and timelines set forth in the strategic plan have been met. Other measurements of success will include an analysis of any increase in the retention rate of current state employees, any increase in the number of applicants for state positions, and any reduction in the time period for processing appeals, hearings and other matters. This will be a continual process of setting internal goals and then determining if they are met. At the end of my tenure, I will look back and see a stronger merit system, a work force that will meet the growing needs of an expanding California, and a personnel system that is responsive to its customers.

2. *The board's Strategic Goals and Objectives for 2005-06 state the board's intent to develop a three- to five-year strategic plan to focus on the current human resource challenges faced in California state government. What is the status of the strategic plan, and what specific goals do you have with respect to the strategic plan?*
  - In May 2007, a new Executive Officer was hired and she has been assembling her Executive team to face the human resources challenges in California state government. Currently the SPB staff is reviewing a new Strategic Plan to be presented to the Board in January. Briefly, the goals are:
    - Meet the State's Hiring Needs
    - Meet Stakeholders' Needs (public, departments, state employees, legislature, unions, advocacy groups, etc.)
    - Provide Leadership to Ensure a Qualified Workforce
    - Enhance Operational Capacity and Effectiveness

## **STATE WORKFORCE ISSUES—WORKFORCE AND SUCCESSION PLANNING**

Approximately 35 percent of the state workforce is eligible to retire within the next five years. This could result in a loss of over 80,000 experienced state employees in a very short period of time.

3. *What has the board done to date to provide leadership for workforce planning efforts in the state? What additional efforts does it have planned? What is the board's relationship to the Department of Personnel Administration (DPA) in providing this leadership?*
  - Board staff has been working with a State Library sponsored team to develop a State of California "Best Practices in California government" website. This website will launch with Workforce Planning best practices from various state agencies in 2008.
  - In addition, we are partnering with the Department of Personnel Administration (DPA) to offer a Workforce Planning Workshop/Conference this spring. We are planning an interactive workshop to provide state agencies with some tools to address their workforce planning needs.

- SPB and DPA have developed a solid working relationship in addressing workforce planning issues. This partnership began with the development of the Human Resources Modernization Strategic Plan and has continued with many initiatives including the development of a new Staff Services Analyst selection program and increased delegation of decisions to state departments in recruitment and selection.
- In addition, SPB offers training to departments, such as a Workforce Planning class which is coordinated with a longer, more in depth class offered at CPS. Both classes use as a foundation the workforce planning model created by DPA and posted on DPA's website. The first step in workforce planning is the strategic plan. SPB offers training on strategic planning.

4. *Do you believe the board should track information on departments' workforce planning efforts? Should another state entity? If the information was tracked, how should the information received be used?*

- DPA and SPB identified the need for the State to track departments' workforce planning efforts in early 2007 as part of the HR Modernization planning process. DPA has implemented a plan to develop a tracking system. Recently, DPA completed a survey to determine which departments are doing strategic plans, workforce/succession plans, and where they are in their processes. SPB and DPA are working together to address the results of that survey. The long range plan of HR Modernization calls for that entity to track departments' workforce planning efforts and then analyze skills gaps statewide to determine where the State, as an employer, is missing the skills needed to meet our goals and objectives now and in the future. In the interim, SPB and DPA plan to support that effort now by surveying departments to begin the tracking effort. We asked departments if they would like more information about workforce planning and will be providing that information to them at the upcoming Workforce Planning conference, as well as providing information on the Best Practices Website and offering individual consultation services with departments as part of an outreach program.

## **HUMAN RESOURCES MODERNIZATION PROJECT**

As part of the 2007 Budget Act, the Legislature approved a \$2.8 million increase to DPA for a new multi-year Human Resources Modernization Project (HRMOD), the overall goal of which is to increase the state's recruitment and retention capabilities. The project is to be administered by the board and DPA. The administration's finance letter, proposing the new project, stated that the first year of the project "will focus on the development of a comprehensive plan to reform the process by which the state brings new employees into civil service, how salary calculations are conducted, and how employees can promote once they are working for the state."



5. *Please provide an update regarding the board's progress in working with DPA in developing this initial plan, as well as an update on the overall progress of the entire project.*

"Getting the Right people in the Right jobs at the Right time" is the key to a model state government human resources system that responds to our changing business needs. The Human Resources Modernization Project is a collaborative effort sponsored by DPA, SPB, and DOF. We have continued to partner together to create a strategic plan which defines the direction for the effort. Through implementation of the strategic plan, the HRMOD project will result in a streamlined system enabled to recruit, develop and maintain a well-qualified, high-performance workforce. As the current workforce ages and moves into retirement, our government services must be able to respond to public needs and changing times. Each and every agency, department, board and commission will benefit from:

- An aggressive recruitment strategy that markets California as an "employer of choice;"
- A streamlined and flexible selection and hiring process;
- A simplified classification system based on competencies rather than duties;
- An improved performance management program; and
- An integrated, automated recruitment and selection system featuring on-line application, examination and certification processes.

The HR Modernization project formally began work in FY 07/08 and ends with the final rollout of the last groups tentatively planned for FY 14/15. The project team formally began operating on October 1, 2007 when the five new permanent project staff began. An expectation of redirected or loaned staff and positions from agencies, departments, boards and commissions will complete project staffing. The project management staff has extensive experience managing large scale projects to successful implementations as well as extensive experience in human resources for the State. To date, much has been accomplished. To name a few:

- Validation of the original Strategic Plan is in process and will result in a project charter, clear project measures and schedule to manage the project;
- A plan to communicate opportunities necessary for a successful implementation, including regular meetings and presentations to the governance board, sponsors, and stakeholders including:
  - SPB, DPA, DOF;
  - Potential interfaces with 21<sup>st</sup> Century and Fi\$CAL Projects;
  - Stakeholders: departments (manager/supervisors and employees), unions, subject matter experts, legislature.



- Occupational Group 1 identified as the Scientists;
- Conducting preliminary business needs sessions with HR professionals, managers/ supervisors, employees and the public;
- Conducting occupational analysis and best practices review;
- Creating the infrastructure to support the HRMOD Governance Board which will begin meeting in January 2008; and
- Completed a procurement process resulting in a contract award to develop a Feasibility Study Report (FSR) which will be used to substantiate the automation solution direction. The FSR is scheduled for completion in January, 2008.

Some early accomplishments planned in the next six months include:

- Develop a classification and compensation model based on competencies;
- Streamline the classification process by abolishing unused classifications;
- Develop a plan to streamline examinations through collaboration across agencies employing scientists;
- Develop long-term Recruitment and Retention Plans;
- Develop Marketing Plan;
- Continue to partner with stakeholders to ensure effective transition of program;
- Develop certification training program for managers/supervisors and human resource professionals; and
- Develop system automation procurement plan, requirements and begin RFP development.

6. *What data and criteria will the board use to measure the progress and success of the project?*

The Strategic Plan for the project was designed to include goals, objectives, and performance measures to guide the direction of the project. The Board has representation both from a sponsorship role and as a representative on the HRMOD Governance Board which will serve as an oversight to the Project. The Executive Project Director reports on the status of the project to the sponsors bi-weekly and to the Board. The report will include status of: key accomplishments including the strategic plan measures, scope and schedule management; planned activities of the project; finances; issues and risks including planned mitigation of risks; and overall project health. In addition, the Executive Project Director of the HRMOD Project will provide quarterly status reports to the State Personnel Board.

## TESTING AND ITS ROLE IN RECRUITMENT TO STATE CIVIL SERVICE

As noted above, the state faces a large number of retirements in the next five years, and many departments will be faced with substantial recruitment challenges. The Legislature has heard many times that the timing and structure of state testing cause delays in hiring, which can decrease the state's competitiveness relative to other employers in attracting good candidates.

7. *What is the board's plan to modify its testing procedures and to reduce hiring delays overall and in specific job classifications?*
  - Board staff has been working to automate as many examinations as possible to speed up the hiring process. The new examination and certification system to be released to production next fall will reduce the delays even more. One example of improved testing processes includes the Staff Services Analyst classification. Previously, in-person testing was required and very limited access was available because of the high cost to administer the examination. The transition to Internet based testing has allowed an increased number of college graduates access to state employment. Since the Internet testing was implemented last August, over 10,000 eligibles have been added to the list.

## REFORMING AND STREAMLINING HIRING OF INFORMATION TECHNOLOGY PERSONNEL (Information Technology Classification Reform)

The 2006 Budget Act provided \$640,000 to DPA to develop an Information Technology (IT) classification and reform plan, in order to reduce the number of classifications and expand Web-based testing for IT jobs. The board has a role in implementing this plan.

8. *What is the status of the board's implementation of this reform plan? When will the state have a new IT classification system in place?*
  - The new classifications proposed in the IT classification consolidation project are scheduled to be adopted by the State Personnel Board in a June 2008 meeting. As currently proposed, 36 existing IT classes will be reduced to 12 classes. In addition, on-line exams for the new IT classes are currently under development. It is anticipated that the exams for the new IT classes will be available in June 2008, to coincide with the adoption of the new IT classes.
9. *What progress has been made in reducing the number of classifications, expanding Web-based testing, and simplifying the overall testing and hiring process for IT positions?*
  - In addition to the progress noted in question number 8, the Board staff is upgrading its automated list certification system to accommodate skill-based eligible list certification for IT classes authorized by AB 2241. The new system is

scheduled to be rolled-out over a three-month period beginning in July, 2008. Some of the more extraordinary features of the new system include:

- Exam candidates will be able to create a unique user profile with his/her personal information that can be stored and updated as necessary,
- Exam candidates will be able to apply for and take IT exams on-line,
- Exam results notices will be issued instantaneously,
- Exam candidates will be able to take exams for their specific functional specialty,
- Departments will be able to request eligible lists on-line for specific functional specialties based on job-specific requirements rather than receiving eligible lists with eligibles from all functions combined.

10. *When the administration initiated this project, it stated that the IT area was the first classification area that it intended to modernize. What lessons have been learned from this project that can guide the state's efforts as it attempts to modernize other classification systems? What other classifications do you believe need modernization?*

- A primary lesson learned from the IT project: It is critical to get all stakeholders in support of, and involved in the modernization process from the very beginning through completion of the effort. This includes the Governor's Office; the LAO; control agencies like DOF, DPA and SPB; the state CIO; executive management; the employees affected by the changes, their labor representatives, and unions. Other elements for successful completion of projects of this magnitude include, but are not limited to, the following:
  - There must be strong and visible commitment and support from policy makers (Legislature and Governor's Office),
  - A project sponsor and governance group must be identified,
  - There must be a skilled project manager selected to lead the project,
  - There must be a project plan in place to clarify the scope, deliverable, schedule, etc.,
  - There must be a plan to coordinate, communicate and implement the changes (change management),
  - The project should have sufficient funding and resources,
  - An environmental scan should be done to identify best practices and lessons learned from other public and private jurisdictions that have done similar projects,
  - There should be performance-based procurement and payment requirements for any vendors needed to work on the project.

The scientists also have been identified for immediate modernization because of their receptiveness, the long-standing problems that could be addressed by modernization, and their relatively small size and number of classes. Other groups that should be considered for immediate modernization:



- All state managers and supervisors: This group is not subject to collective bargaining and will be needed to implement any changes envisioned by the modernization effort, and this should be a top-down transformation;
- All state HR staff since they will need to understand and implement the modernization changes, they should be considered change agents and partners with line program management, and they need to transition from being transaction processors to HR consultants directly involved with top-level management.

## **MEDICAL STAFF AT THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION STAFF**

The *Plata v. Schwarzenegger* lawsuit has shed light on the problems of the California prison medical system, including the shortage of qualified medical staff. The court receiver for the *Plata* lawsuit has identified the board as the focal point for improving the classification and testing systems for medical positions at the California Department of Corrections and Rehabilitation (CDCR).

11. *What has been the progress to date in automating these exams, and what effect has this had on the medical staffing levels at CDCR?*

Since the Receiver was created in April 2006, SPB has developed the following on-line examinations for CDCR:

- Certified Nursing Assistant
- Chief Dentist, Correctional Facility
- Dentist, Correctional Facility
- Dental Assistant, Correctional Facility
- Health Records Technician I
- Health Records Technician II (Specialist)
- Health Records Technician III (Supervisor)
- Licensed Vocational Nurse, Safety
- Medical Transcriber
- Pharmacy Technician
- Physician & Surgeon, Correctional Facility, (Internal Medicine/Family Practice)



- Senior Medical Transcriber
- Staff Psychiatrist, (Correctional & Rehabilitative Services) (Safety)
- Supervising Registered Nurse II, Correctional Facility
- Supervising Registered Nurse III, Correctional Facility

While there has yet to be a review of the effectiveness of these changes due to the relatively short amount of time since their development, a review is scheduled in conjunction with CDCR for fall 2008.

12. *Has the board come to any agreements with the receiver on a new classification system for these personnel or any other changes to these jobs? If so, please describe these changes and their impact to date.*

As mentioned earlier, the Receiver was created in April 2006. Since then, the SPB has adopted the following nine Receiver-related classification proposals:

Class Title	Type of Request	Status	SPB Calendar Date
1. Registered Nurse, CF	Change probation to 12 mo	Adopted	11-5-07
2. Receiver's Nurse Executive <sup>1</sup>	New class	Adopted	10-22-07
3. Supervising Dental Assistant	New class	Adopted	10-9-07
4. Supervising Dentist	New class	Adopted	6-5-07
5. Public Health Social Worker Consultant I	Use class from Social Services	Adopted	12-19-06
6. Medical Record Director	Class revision	Adopted	9-19-06
7. Licensed Vocational Nurse (Safety)	Class revision	Adopted	7-25-06

---

<sup>1</sup> This is in response to the Court's direction that the Receiver and SPB meet and confer regarding a mechanism for hiring medical health care executives/ administrators in CDCR which addresses the Receiver's needs in a manner consistent with the California Constitution.

8. Staff Psychiatrist, Correctional and Rehabilitative Services series	New class	Adopted	6-21-06
9. Certified Nursing Assistant, Correctional Facility	New class	Adopted	6-7-06

The SPB has adopted some distinctive features that should enhance CDCR's ability to hire employees into these classes more quickly such as: removed drug testing as a requirement for LVNs at the request of the Receiver, designated certain classes as safety that were not so designated before (e.g., Registered Nurse, Licensed Vocational Nurse, and Certified Nursing Assistant), and adapting limited three ranks eligible lists scoring for a large number of classes including: Certified Nursing Assistant (CF), Licensed Vocational Nurse (Safety), Pharmacist I/II, and Chief Physician and Surgeon, Correctional Facility.

Again, while there has yet to be a review of the effectiveness of these changes due to the relatively short amount of time since their development, we plan to do so, in conjunction with CDCR, in fall 2008.

13. *How do any changes made by the State Personnel Board regarding classifications for medical positions at CDCR affect other parts of state government, particularly medical staffing shortage levels at the departments of Mental Health, Developmental Services, and Veterans Affairs? What are you doing to address these shortages?*

It should be noted that some if not all of the salary increases were ordered by the Court. Some of the changes (e.g., Receiver's Nurse Executive) have to do with establishing high-level classifications in a way that allows the pay for these Receiver-created positions to be substantially higher than comparable medical classifications at other state medical facilities. Moreover, some new classes have been designated for safety retirement (listed in the response to question #12 with Safety or Correctional Facility in their titles) and are eligible for better retirement benefits, which can impact other agencies' abilities to recruit and retain staff.

The enhanced compensation the Receiver can offer prospective employees certainly has the potential to create recruitment and retention problems for non-CDCR state medical facilities. In fact, CDCR pay enhancements have already resulted in transfers from other state medical facilities to CDCR. For example, the Department of Veterans Affairs' (DVA) Yountville facility recently had four nurses leave for CDCR jobs, and the current nursing vacancy rates are approximately 24%. To maintain staffing levels, DVA has resorted to contracting for health care professionals at much higher pay rates than comparable state employees, as well as working staff significant amounts of overtime. Moreover, DVA has experienced recruitment difficulties at all three of its existing veterans homes; which will be exacerbated when five new homes requiring almost 1,200 new staff, will be constructed over the next five to seven years.

To address situations like this, the SPB is aware the DVA, Mental Health and Developmental Services are preparing requests for additional compensation for their medical classes, and will soon submit them to DPA. Unquestionably, higher compensation can be a key motivator in decisions to move between these facilities and CDCR, and their success in gaining these salary increases will weigh heavily in their ability to attract and retain qualified medical staff.

Increasing the compensation has not always proven to solve the problem. Enhanced recruitment efforts is another method that DPA is pursuing by including \$350,000 in their 2007/08 budget to contract with one or more recruitment contractors to locate and develop a pool of prospective health care professionals for various state departments that employ medical, mental health, or dental professionals. SPB will assist in this effort to the extent necessary to maintain sufficient staffing levels in these non-CDCR departments.

Moreover, SPB can work with these departments to develop appropriate classification, recruitment, exam or appointment-related solutions within SPB's jurisdiction if the CDCR-related changes were beginning to impact their recruitment and retention of qualified medical staff. In addition, SPB is pursuing simplified and expedited testing.

Notwithstanding these efforts, SPB suggests that there should be a big-picture approach to addressing the state's medical facility issues because this is a potentially serious issue for all departments with medical and nursing responsibilities. If the non-CDCR facilities can't retain sufficient staff to meet licensing requirements, then they would not only be compromising the health of their patients, they would be subject to severe regulatory penalties and potential law suits similar to those that led to the receivership situation at CDCR. Robbing Peter to pay Paul perpetuates a vicious cycle of ever-escalating salary increases that constantly creates winners and losers. A more thoughtful and comprehensive approach to this problem is required.

Again, thank you for the opportunity to address these issues. If you have any questions or other issues, I can be reached at 916-552-2300. I look forward to appearing before the Committee on January 16, 2008.

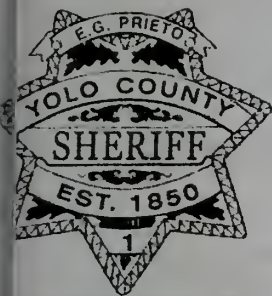
Respectfully,



Richard S. Costigan, III.  
Vice President - Elect  
California State Personnel Board







# Yolo County Sheriff's Department

2500 East Gibson Road, Woodland, CA 95776

(530) 668-5280

Fax (530) 668-5238

(916) 375-6493

**E. G. Prieto**  
Sheriff - Coroner

**Tom A. Lopez**  
Undersheriff

**Administration**  
(530) 668-5280  
Finance  
Personnel  
Planning & Research

**Prisoner Training**  
Facility  
Commissary  
Inmate Education  
Inmate Programs  
Inmate Training

**Coroner's Section**  
(530) 668-5292

**Field Operations**  
(530) 668-5280  
Civil  
Community Resources  
Crime Prevention  
Department Training  
Investigations  
Marine Patrol  
Patrol  
Search & Rescue  
Aero Squadron  
Cadets  
Posse  
Reserves  
STARS

**Animal Services**  
(530) 668-5287

**Leinberger**  
Detention  
(530) 668-5254  
Corrections  
Late Work Programs

**Monroe Detention**  
(530) 668-5245  
Court Services  
Corrections  
Food Services  
Records  
Transportation

December 17, 2007

California State Senate  
Rules Committee  
The Honorable Don Perata, Chair  
1303 10th Street, Room 400  
Sacramento, CA 95814

Dear Senator Peralta:

It has been an honor and a privilege to serve as a member of the Corrections Standards Authority for the year 2006-07. With your approval, I look forward to serving as a member of the Corrections Standards Authority in the future.

I also want to extend my personal appreciation to the Corrections Standard Authority Board staff members that provided me with the history and background of the Corrections Standards Authority, which gave me the necessary information to respond to the attached questionnaire.

Sincerely,

E.G. PRIETO  
SHERIFF-CORONER

EGP: lp

Senate Rules Committee

DEC 18 2007

Appointments

*"Service Without Limitations"*



# *Yolo County Sheriff's Department*

2500 East Gibson Road, Woodland, CA 95776

(530) 668-5280

Fax (530) 668-5238

(916) 375-6493

## **Senate Rules Committee – Board Member's Responses**

### **Mission**

On July 1, 2005, as part of the governor's reorganization of the Youth and Adult Correctional Agency, the Board of Corrections became known as the Corrections Standards Authority (CSA). It has long had responsibility for setting standards and conducting inspections at local jails and juvenile halls, regulating the selection and training of local correctional facilities. Under the reorganization, CSA was given additional responsibilities, including the setting of minimum standards for state correctional facilities. As a result of legislation signed into law in 2007, the board is also responsible for setting standards for the awarding of hundreds of millions of dollars for new jails and reentry facilities and juvenile detention centers.

- 1. Please provide a brief statement of your goals. What do you hope to accomplish during your term on CSA? How will you measure your success?**

My goals include: distributing up to \$1.2 billion dollars in Jail Construction Funds to local jails; distributing up to \$100 million dollars in Local Juvenile Construction Funds; review and approve revisions to the local adult Titles 15 and 24 regulations; and to provide visionary leadership to enhance and improve local and state corrections.

- 2. What training did you receive to help you understand the various responsibilities of the CSA?**

After I was appointed by the Governor, CSA contacted me to schedule a new board member orientation meeting. At this meeting, I was briefed by CSA's Executive Director and the Deputy Directors responsible for each of the CSA divisions. The orientation was very beneficial to me as a new member, and it provided me with the framework to understand the complex nature of the Board's responsibilities. As a Board member, I can meet with or call CSA staff at any time, if I need additional information.

- 3. The CSA board meets every other month. Is this often enough for the board to carry out its increasing number of missions? How do you stay informed of the CSA's activities?**

The Board's current schedule allows for adequate time for agenda items to be discussed. The Board has met in special sessions (e.g., teleconference and special Board meetings) when time is of the essence.

***"Service Without Limitations"***

4. In recent written and verbal testimony before the Little Hoover Commission, CSA's executive director stated that CSA has several concerns about implementing the juvenile justice realignment legislation enacted earlier this year. What changes need to be made to ensure the successful implementation of this legislation? How will you be involved in the overseeing the implementation and oversight of CSA's responsibilities in this regard?

AB 191 was the cleanup bill enacted to provide clarification of responsibilities, timeframes, resources and legislative intents for SB 81. CSA's Executive Director explained to the Little Hoover Commission that AB 191 failed to provide resources for CSA to implement these mandates as specified in the legislation (e.g., specified timelines). At the November 8 CSA Board meeting, staff proposed recommendations to the Board, so that the mandates in SB 81 and AB 181 could met, without additional resources. The Board approved these recommendations, and staff has provided direction to the field regarding the application processes for the housing of 18 to 21 year old offenders within juvenile detention facilities, disbursement of the Youthful Offender Block Grant and for the development of the Juvenile Justice Development Plans. The end result is that the specified timelines will not be met, and CSA will only be able to provide limited technical assistance for these new programs.

CSA staff will update the Board members periodically as to the progress of implementing these new mandates. If any compliance issues arising from housing of 19 to 21 year olds, the Board will take action at a regularly scheduled Board meeting.

5. What, in your view, should be CSA's top priorities? If CSA does lack resources, how will you prioritize projects and activities?

CSA's top priorities as to conduct inspections of adult and juvenile detention facilities, to promulgate and biennially review regulations for the operations of adult and juvenile detention facilities, and to promulgate and biennially review selection and training standards for correctional officers, and to implement programs, as specified in statute or by agreements with the Federal government.

6. When you meet at a correctional facility such as the Napa County Youth Detention Center where the November meeting was held, do you have an opportunity to tour the institution? What lessons do you take away from these site visits that you can apply to your decision -making?

CSA hosts three meetings in Sacramento, and the other three locations showcase new facility construction or programs funded or administered by the CSA. This accomplishes two important objectives: it provides access to CSA meetings for those local corrections administrators and county officials



who find it difficult to travel to Sacramento; and, it is a cost-effective way to provide CSA board members with an opportunity to personally observe the progress of key programs, projects and facilities for which the board is responsible.

Personal visits to new facilities give me the opportunity to speak with staff, jail inmates or wards of the juvenile court. I can see how these facilities are designed and how services are efficiently provided (e.g., classrooms, medical stations, dining areas in the same podular housing unit).

### **Assembly Bill 900**

Under AB 900, Chapter 7, statutes of 2007, CSA is to approve plans for \$750 million in new county jail facilities. Among other things, CSA is to give "funding preference" for new jail construction to counties that assist the state in placing reentry facilities for inmates approaching parole. In addition, the authority is to give preference to counties that assist the state in placing mental health day treatment and crisis care facilities and for counties that provide mental health and substance abuse care to parolees.

- 7. In a draft proposal submitted to the board in November, a CSA executive committee established a ranking system based on 1,050 points. It awarded 75 points for reentry facilities and 50 for mental health programs. How were these factors weighted in the final proposal?**

At the May 10, 2007 CSA Board meeting, the Board appointed San Bernardino County Sheriff Gary Penrod and myself to serve as the chair and co-chair for the Jail Construction Executive Steering Committee (ESC). At the July 12, 2007 CSA Board meeting, the Board approved the list of names submitted to serve as ESC members. On September 24, 2007, the ESC met in public session to: 1) develop the elements of the Request for Proposal (RFP) for AB 900 jail construction funds; 2) to develop specific factors (criteria) to be used to rate proposals; and, 3) to develop how the proposals will be rank ordered, so that counties could receive intent to award notices. The ESC developed the preliminary RFP, which was posted on the CSA website on November 1, 2007. The purpose was to allow counties and interested parties the opportunity to comment on the RFP at the November 14, 2007 "feedback session", and to allow the ESC to make amendments to the RFP, based upon public comment, before it is presented to the CSA Board at the December 13, 2007 meeting.

The preliminary RFP included a total of 1050 points for nine factors, which included: 1) project need; 2) detention alternatives; 3) scope of work and project impact; 4) administrative work plan; 5) net gain in beds; 6) cost effectiveness; 7) cash match; 8) preference points for assisting the state in

siting a reentry facility; and, 9) preference points for assisting the state with siting mental health day treatment and crisis care facilities and the continuum of care for parolees after discharge from parole.



The initial number of points designated for preference points for assisting the state in siting a reentry facility and the siting of mental health day treatment and crisis care facilities and the continuum of care for parolees after discharge from parole was 75 and 50 points respectively. At the November 14, 2007 "feedback session", it became evident to the Jail Construction ESC chair and co-chair that the points for assisting the state with the siting of a reentry facility needed to be increased based upon public comment. Immediately after the "feedback session", the chair and co-chair met and agreed to increase the points for this preference from 75 to 150 points. The chair emailed a letter to the ESC members recommending that the preference points for counties assisting the state with siting a reentry facility should be increased from 75 to 150 points based upon public comment. The ESC members concurred with the chair's recommendation and the RFP was amended.

The amended preliminary RFP was presented to the CSA Board for action at the December 13, 2007 Special Session meeting. At this meeting, the Board further amended the RFP, resulting in the preference points for reentry facilities to increase from 150 points to 300, and the continuum of care preference was increased from 50 points to 100. This change made the preferences for assisting the state the highest point categories in the RFP. The CSA Board voted unanimously to approve the amended RFP and directed staff release it to the field.

8. **As the board creates a formula for granting \$750 million for county jail construction, how does it propose to divide the funds between the smaller more rural counties and the larger urban counties?**

At the September 24, 2007 Jail Construction ESC meeting, the ESC proposed to divide the \$750 million dollars in lease revenue funding authorized by AB 900 (Phase I) into three separate categories of funding. The ESC relied on the Department of Finance (DOF) January 2007 general population data, and they divided the \$750 million dollars as follows:

Large counties (700,001 population and above): \$600 million.  
Medium counties (200,001 to 700,000 population): \$100 million.  
Small counties (up to 200,000 population): \$50 million.

The ESC also proposed establishing a cost cap to alleviate the possibility that one county could receive a disproportionate share of funding. The ESC chose not to impose a cost per bed cap, but they agreed that a per project cap should be imposed. Relying on the DOF general population data from January 2007, they established cost caps as follows:

Large county - \$125 million in state funds per project  
Medium county - \$25 million in state funds per project  
Small county - \$12.5 million in state funds per project

The primary reasons for dividing the funding into three separate categories goals of the ESC were to ensure that small, medium and large counties could compete with

similar sized counties, and to provide as many counties with the opportunity to compete for a portion of the jail construction funding. The ESC also recognized that AB 900 specified that 4,000 jail beds are under construction or sited, and at least 2,000 of the original reentry beds are under construction or sited before \$470,000,000 million dollars in lease revenue funding is authorized in Phase II.

The Jail Construction ESC held a "feedback session" on November 14, 2007 to allow counties and interested parties to comment on the preliminary RFP. Based upon comments made at this meeting, the ESC chair and I agreed to amend the RFP to increase the funding for small counties from \$50 million to \$100 million and a cost cap increase from \$12.5 million to \$20 million; increase medium counties from \$100 million to \$150 million and a cost cap increase from \$25 million to \$30 million; and, large counties reduction from \$650 million to \$500 million and a cost cap decrease from \$125 million to \$100 million. The ESC chair mailed a letter to the ESC members proposing to amend the RFP to incorporate the above changes, and the ESC members concurred with the amendments.

At the December 13 Special Session Board meeting, CSA voted unanimously to set aside \$100 million dollars for small and rural counties, and we increased the cap from \$20 million dollars to \$30 million dollars. We also set aside \$650 million dollars for medium and large counties (e.g., competing against each other, no separate set asides for medium and large), and we increased the cap for medium counties from \$30 million dollars to \$80 million dollars and the large cap remained the same at \$100 million dollars.

9. Do you plan to factor in counties that are proposing to incorporate innovative energy-efficient projects or use of green building products in their construction plans? How?

Yes. "Green" building is encouraged. Sustainable or "green" building is the practice of designing, constructing, operating, maintaining, and removing buildings in ways that conserve natural resources and reduce their overall impact on the environment. Compliance is voluntary, but will be one factor considered in the evaluations of proposals when assessing proposed scope of work and project impact.

#### **2005 Reorganization-Minimum Standards**

The Reorganization of the 2005 established a January 1, 2007, deadline for CSA to set minimum standards for state correctional facilities. However, several board members have indicated that the board does not have the resources to meet this goal.

10. Please describe the current status of this effort and what steps have been taken to obtain funding and staff to fulfill this part of the CSA mission?

CSA staff has been challenged by the immense scope of responsibilities resulting from the 2005 Reorganization while continuing to provide the level of services to its already existing constituents, shareholders, and stakeholders. While this legislation



amended statute and gave CSA new authority, it did not provide sufficient funds or personnel to accomplish these duties. Adequate funding is paramount to the success of any program or delivery of services and CSA has no immunity from these constraints.

Specific to selection and training standards, CSA's Administration initiated a contract with California State University Sacramento in July 2005 to assist in the development of selection and training standards with the limited resources that were available to the agency. In addition, CSA staff submitted budget concept proposals for FY 06/07 and FY 07/08 identifying the additional resources needed to meet these new mandates. However, these funding proposals were unable to compete with the other CDCR budget priorities and were denied.

In January 2007, CSA staff met with CDCR Administration and received approval of funding to complete the job analysis research which is the foundational step to the development of standards. As a result of this additional funding, a final report on the job analyses for the primary classifications of Correctional Officer (CO), Youth Correctional Officer (YCO), and Youth Correctional Counselor (YCC) will be completed on target in December 2007.

Currently, CSA's Administration is again meeting with CDCR to address the resources needed to meet project demands and determine if additional funding is available that can be diverted to these activities to prevent delays. Project completion dates of December 2009 have been set for the development of selection and training standards on the CO/YCO/YCC classifications but these dates will be dependent upon adequate resource allocations to match the service demands.

**11. How is the board addressing other responsibilities such as spelling out the duties of correctional officers and other correctional jobs or validating the test given to correctional officer applicants? What is the timeframe for completing these duties?**

The CSA Board receives routine informational updates from CSA staff on the standard setting responsibilities for the selection and training of state correctional peace officers also known as the Job Components Analysis Project (JCAP). This project will be completing the job analyses for the three major classifications of Correctional Officer (CO), Youth Correctional Officer (YCO), and Youth Correctional Counselor (YCC) for the California Department of Corrections and Rehabilitation (CDCR) in December of 2007.

In January of 2008, based on this new research CSA staff will begin the initial steps toward the development of minimum standards for selection and training of these classifications. The target dates for the development of standards for these specific classifications are December 2009 but are dependent upon sufficient resources being allocated towards these efforts.

CSA staff was requested in 2006 to redirect its focus to examine the CO/YCO/YCC written exams and determine the feasibility of combining them into one exam for the purpose of increasing the efficiency of the selection process. A detailed review was conducted and it was determined as a result of that analysis that an interim exam needed to be developed until such time as a full job analyses was completed and selection tools could be established.

CSA staff has provided updates to the CSA Board on the development of this exam which was completed in December 2006 and was implemented by CDCR in January 2007. JCAP staff in conjunction with California State University Sacramento (CSUS) has continued to develop, review, revise, and analyze additional exam questions for an item bank for future versions of the test for the purpose of maintaining exam security and validity. The next version of this exam will be completed and available to CDCR for implementation in January 2008. This exam allows CDCR to continue to test applicants for the three different job classifications fairly, without the risk of legal liability or challenge, until such time as the JCAP can set new selection standards.

#### **Local and State Facility Responsibility**

Historically the board staff has said that the keystone to its success has been taking a collaborative approach, working with counties to get them to meet standards. Critics, however, say that CSA "has no teeth," and needs additional tools so that, if needed, it can compel counties to meet its standards.

#### **12. How often does your staff inspect a county jail or juvenile hall? Do they make surprise visits? Do you believe the number of visits are sufficient?**

CSA staff conduct inspections at local adult and juvenile facilities once every two years (biennial inspection), in accordance with Penal Code § 6031.1 and Welfare and Institutions Code § 209 and 885. In addition to these required biennial inspections, CSA staff provides ongoing technical assistance to facilities, based upon their needs (e.g.; onsite construction project review, provide training to staff, and assist agencies with resolving compliance issues).

CSA staff work diligently to form collaborative working relationships with all stake holders involved with the adult and juvenile detention systems within each of the counties. These relationships become the axle that the biennial inspection cycle rotates. CSA has a long and proven history of moving counties into compliance utilizing a two year cycle that includes pre-inspection briefings, technical assistance, inspection, and regulation revision. CSA staff does not conduct surprise visits as they are counter productive and do not foster trusting collaborative relationships between local agencies and the CSA.

CSA staff can provide technical assistance to adult and juvenile detention facilities as needed. This allows staff to working collaboratively with counties in solving problems before they become a compliance issue.



- 13. Are you able to personally visit facilities and familiarize yourself with conditions? If so, what have been your findings? If not, how do you learn about these issues?**

As a Board member, I have not arranged visits to local adult and juvenile facilities. The reason is because as an elected sheriff, I have visited many jails and juvenile detention facilities in my official capacity. I stay current on litigation issues throughout the state by networking with the California State Sheriff's Association.

- 14. Do you believe the authority has sufficient power to ensure that needed changes are made after inspections? Do you need additional enforcement tools?**

CSA has historically worked with counties to resolve compliance issues. This relationship has resulted in open communications, and allows CSA to learn about conditions that may result in litigation. At this time, it is not necessary for CSA to rely upon legal sanctions to force a county to comply with regulations.

#### **Lawsuit**

In a taxpayer lawsuit filed in April 2006, the Prison Law Office, on behalf of Candace Waters, alleged that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate the law." It asserts that the authority fails to crack down on counties that repeatedly violate the law. The suit also alleges that CSA fails to disclose violations to counties, require plans to fix the problems, and identify facilities that are "unsuitable for the confinement of minors."

- 15. Please describe what steps CSA has taken to respond to the lawsuit and the status of the litigation.**

(All of you will at some point in time be named as defendants in the Candace Waters v. Corrections Standards Authority [members are named individually in the action]).

Since this case is in litigation, you should decline to answer this question and defer to your legal representative:

Steven Gevercer, Deputy Attorney General  
Department of Justice  
Office of the Attorney General  
(916) 322-7487  
**Education Requirements**

Among many other requirements, CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of their inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors

who are kept out of class for disciplinary reasons, and ensure there are enough teachers.

**16. What oversight do you provide to ensure that inspections are complete and accurate?**

CSA Board members rely on their staff and the biennial inspection process to ensure complete and accurate inspections. CSA Board oversight occurs when compliance issues are identified within a juvenile detention facility and the county fails to correct the identified area of non-compliance. Section 209 (d), Welfare and Institutions Code requires counties with unresolved identified compliance issues come before the CSA Board for a determination of suitability if the areas of non-compliance are not resolved within five months after the inspection is completed. In addition, Board members may contact their staff at any time and make inquire about specific issues they may have regarding any of the local juvenile detention facilities in the state. These issues may include, but are not limited to education.

**17. What role should CSA play in ensuring better educational opportunities for the incarcerated? What is the appropriate action for the authority to take when it finds that a county is not meeting its obligation to provide adequate space for classes?**

Among many other requirements, the CSA is responsible for inspecting local juvenile and adult detention for compliance with state regulations. As part of the inspections, authority officials determine if the facility is in compliance with Section 1370, Title 15, California Code of Regulations (CCR). This section requires juvenile detention facilities provide an education program that complies with the State Education Code and County Board of Education policies. Section 1313, Title 15, CCR requires the Superintendent of Schools to annually access the educational program. Authority staff relies on this annual report when determining compliance with regulations. Authority staff does not access the quality of the education programs within juvenile detention facilities, they only access compliance with the applicable Title 15 regulations.

If areas of non-compliance are discovered during the inspection, they are detailed in the inspection report. The inspection report is then provided to the facility administrator, facility manager, presiding Juvenile Court Judge, the county Chief Administrative Officer, the chair of the Board of Supervisors, and the chair of the Juvenile Justice Commission. As required in Section 209, Welfare and Institutions Code, the county has 60 days to complete and submit to the CSA a corrective action response. The county has 90 days after the completion of the corrective action response to correct the compliance issue. If the county fails to correct the compliance issue within these time frames, the county will be required to come before the CSA Board where the Board will make a determination of suitability. If, after examining all relevant facts surrounding the compliance issue, the CSA Board determines the facility is not a suitable place for the confinement of minors, the finding will be posted on the CSA website.



**18. With the passage of SB 81, more youthful offenders will remain under county jurisdiction rather than state jurisdiction. What steps has CSA taken to prepare for its increased oversight responsibilities due to the passage of SB 81?**

SB 81 expands the burden of ensuring the safe operation of local juvenile detention facilities on the CSA and the State. In order to house wards as specified in SB 81, this statute requires counties to apply to the CSA for approval of a county institution established for the purpose of housing juveniles as a suitable place for the detention or commitment before the facility can house an individual under the jurisdiction of the juvenile court who is 19 years of age or older but under the age of 21 where the detained person will come into contact with persons under 18 years of age that are detained at the county institution. Furthermore, SB 81 requires CSA to review and approve or deny the application of the county within 30 days of receiving notice of this proposed use.

At this time the CSA is awaiting response for additional resources. In an effort to meet the intent of the legislation and in-lieu of additional resources being provided to implement the aforementioned approval process, the CSA Board, at their November 8, 2007 meeting, approved the following approval process by which approval or denial will be based upon: CSA staff will require counties submit detailed plans that address the programming, capacity and safety issues associated with the housing of older offenders as specified in the new legislation. CSA will utilize current Title 15 and 24, California Code of Regulation requirements and current Juvenile Justice Delinquency Prevention Act requirements when assessing a facility's programming and capacity. Assessing a facility's safety will require CSA staff to rely on their experiences obtained during previous onsite visits and the facility's regulation compliance history. CSA staff would then notify the county within 30 days of their approval or denial of the application. During the biennial CSA inspection, authority staff will further scrutinize the facility's ability to meet the intent of Section 208.5.

**Grant Administration**

**19. What oversight does the board perform to ensure that funds are being spent on the stated purpose of grants? How does the board determine whether programs are achieving desired results?**

To ensure that grant and program funds are expended in accordance with program requirements, the CSA has provided oversight that is consistent with federal and state legislative requirements, Generally Accepted Accounting Principles, and prudent administrative practices, whenever possible. The CSA board has charged staff with regular monitoring (both programmatic and fiscal) of programs in most instances. The CSA oversight exists at several stages of program development and implementation, including but not limited to:

- Appointment of CSA members, State Advisory Committee on Juvenile Justice (SAG) members, and Subject-Matter Experts to Executive

- Steering Committees (ESC's) charged with program development, proposal rating, and identification of performance outcome measures;
- Approval of initial program timelines and reporting schedules regarding individual progress reporting and submission of quarterly fiscal invoices when applicable;
- Utilization of state contracts, and/or Grant Agreements, approved locally by Governing Boards (e.g. Board of Supervisors, City Council or Board of Directors) and local planning entities (i.e. Juvenile Justice Coordinating Councils), and signed by local department heads ensuring that program
- activities, proposed budgets, and desirable programmatic and fiscal benchmarks, as well as outcomes are formalized;
- Presentation of updates regarding programmatic and fiscal status at regularly scheduled CSA meetings;
- Regular monitoring and technical assistance of projects by CSA staff as required; and
- Review and approval of annual statewide reports including summary of both fiscal and programmatic findings, as required.

As CSA is not directly involved in the disbursement of funds to counties for the Juvenile Justice Crime Prevention Act (JJCPA), we are not considered the fiduciary agent for this program. CSA coordinates administration of this program with the State Controller's Office (SCO). The SCO administers the JJCPA funds and disburses them directly to each county and ultimately accounts for any unspent monies. As indicated in the enacting legislation, CSA is responsible for review of each county's plan and development of the annual statewide report on legislatively required outcomes. Similarly, the CSA while providing oversight of the Youthful Offender Block Grant (YOBG) and Juvenile Justice Development Plans as described in Senate Bill 81, is not directly involved in the actual distribution of these funds, save for the 5 percent of the YOBG that is disbursed to counties due to unforeseen circumstances. It is noted that the Governor authorized the Department of Finance to coordinate with the State Controller's Office in disbursement of the YOBG funds for FY 2007-08.

**20. Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the CSA board protect against potential conflicts of interest?**

To protect against potential conflicts of interest during the review and approval of competitive grant processes, CSA Board Members and State Advisory Committee on Juvenile Justice and Delinquency Prevention (SAG) Members must recuse themselves from the review, rating, or judging of proposals or situations in which a bias may be perceived. This recusal is most often applicable when a Board Member or Committee Member's particular agency or department, or affiliated agencies or departments from within the same jurisdiction, are entered into competition for grant funds.





# County of Fresno

**LINDA PENNER**  
CHIEF PROBATION OFFICER

December 17, 2007

Nettie Sabelhaus  
Rules Committee Appointments Director  
Room 420, State Capitol  
Sacramento, CA 95814.

**Senate Rules Committee**

**RE: Linda Penner's Response for Senate Rules Committee**

DEC 17 2007

**Appointments**

- 1. Please provide a brief statement of your goals. What do you hope to accomplish during your term on CSA? How will you measure your success?**

It is my goal to ethically and morally carry out the many charges assigned to the Corrections Standards Authority. As a board member I am committed to providing leadership in the field of local and state detention and corrections as we carry out our many mandates. I am committed to being well prepared and will make every effort to attend as many meetings as possible. It is my pledge to the State of California the Governor and the Legislature that I will fully and without reservation carry out my duties as a Corrections Standard Authority Board Member.

If I am successful in accomplishing these goals at the end of my term I will have provided oversight that funded many meaningful projects and insured local and state correctional facilities and programs are designed, constructed and operated in ways that promote the highest degree of public safety.

- 2. What training did you receive to help you understand the various responsibilities of the CSA?**

Prior to attending my first Corrections Standard Board meeting I was provided an orientation from the CSA Executive Director and the Deputy Directors responsible for each CSA division. The orientation was approximately four hours and I was given ample time to ask questions. Since that time CSA staff has always been available to answer any question that may arise.

- 3. The CSA board meets every other month. Is this often enough for the board to carry out its increasing number of missions? How do you stay informed of the CSA's activities?**

**OFFICE OF THE CHIEF PROBATION OFFICER**

1100 Van Ness / Suite 874 / 8<sup>th</sup> Floor / Fresno, California 93721 / Phone (559) 488-3640 / FAX (559) 262-4327

Equal Employment Opportunity • Affirmative Action • Disabled Employer

Having little historical perspective it is difficult to say what may have been the appropriate number of meetings in the past but it is clear to me that with the increasing number of missions assigned to CSA we may need meet monthly until we fulfill our these mandates.

The CSA Executive Director and Staff have done an excellent job of keeping the board informed by use of email, conference calls and written materials.

- 4. In recent written and verbal testimony before the Little Hoover Commission, CSA's executive director stated that CSA has several concerns about implementing the juvenile justice realignment legislation enacted earlier this year. What changes need to be made to ensure the successful implementation of this legislation? How will you be involved in overseeing the implementation and oversight of CSA's responsibilities in this regard?**

When the Juvenile Justice Realignment Act or SB 81 was signed by the Governor it included the need for language clarification. The cleanup bill or AB191 was designated to provide clarification of responsibilities, timeframes, resources and legislative intent failed to do so and as a result responsibility for these duties fell to CSA Staff and the Board. The CSA staff has developed proposed methods by which the mandates contained in SB81 and AB 191 could be met and presented them to the CSA Board at our November 8, 2007 meeting. The board reviewed and agreed with these methods. Board staff has provided direction to the field regarding application process for the housing of 18 to 21 year old offenders within juvenile detention facilities, disbursement of the Youthful Offender Block Grant and for the development of the Juvenile Justice Development Plans. Currently each of the requirements of these bills is being met but because of limited resources compliance will produce a product that is less than ideal.

Given the broad implications of this legislation and its effects upon the three divisions of CSA I have concerns regarding the lack of adequate resources provided to implement the realignment reforms. Board involvement in this process begins with support for expanded CSA resources. In the event these resources are not available it is the boards responsibility to insure any plan put in place even with limited resources provides for the safety and well being for the minors we serve.

- 5. What, in your view, should be CSA's top priorities? If CSA does lack resources, how will you prioritize projects and activities?**

Statutorily the priorities of CSA have not changed, the mandate continues to be to provide leadership and coordination in the field of local and sate detention and corrections for the State of California. The intent to provide maximum levels of assistance to assure that local and state correctional facilities and programs are designed, constructed, and operated in ways that promote the highest degree of public safety, the welfare and safety of personnel, and the humane confinement of persons consistent with executive, legislative and judicial policy is ongoing and of utmost importance. With that said current implementation, oversight and roll out of SB81 or AB 191 and AB 900 would go to the top of the list of priorities for the board.

- 6. When you meet at a correctional facility such as the Napa County Youth Detention Center where the November meeting was held, do you have an opportunity to tour the institution? What lessons do you take away from these site visits that you can apply to your decision-making?**



To the credit of CSA they offer varied meeting sites allowing board members to tour locations that showcase construction or programs funded or administered by the CSA. The tour of the Napa facility provided me with an opportunity to see the work of CSA in action. It was a positive experience and I support the varied meeting sites as it accomplishes two important objectives: it provides access to CSA meetings for those local corrections administrators and county officials who find it difficult to travel to Sacramento and it is a cost effective way to provide board members with an opportunity to personally observe the progress of key programs, projects and facilities with CSA oversight.

### **Assembly Bill 900**

Under AB 900, Chapter 7, Statutes of 2007, CSA is to approve plans for \$750 million in new county jail facilities. Among other things, CSA is to give “funding preference” for new jail construction to counties that assist the state in placing reentry facilities for inmates approaching parole. In addition, the authority is to give preference to counties that assist the state in placing mental health day treatment and crisis care facilities and for counties that provide mental health and substance abuse care to parolees.

- 7. In a draft proposal submitted to the board in November, a CSA executive committee established a ranking system based on 1,050 points. It awarded 75 points for reentry facilities and 50 for mental health programs. How were these factors weighted in the final proposal?**

At the May 10, 2007 CSA Board meeting, the Board appointed San Bernardino County Sheriff Gary Penrod and Yolo County Sheriff Ed Prieto to serve as the chair and co-chair for the Jail Construction Executive Steering Committee (ESC). At the July 12, 2007 CSA Board meeting, the Board approved the list of names submitted to serve as ESC members. On September 24, 2007, the ESC met in public session to: 1) develop the elements of the Request for Proposal (RFP) for AB 900 jail construction funds; 2) to develop specific factors (criteria) to be used to rate proposals; and, 3) to develop how the proposals will be rank ordered, so that counties could receive intent to award notices. The ESC developed the preliminary RFP, which was posted on the CSA website on November 1, 2007. The purpose was to allow counties and interested parties the opportunity to comment on the RFP at the November 14, 2007 “feedback session”, and to allow the ESC to make amendments to the RFP, based upon public comment, before it is presented to the CSA Board at the December 13, 2007 meeting.

The preliminary RFP included a total of 1050 points for nine factors, which included: 1) project need; 2) detention alternatives; 3) scope of work and project impact; 4) administrative work plan; 5) net gain in beds; 6) cost effectiveness; 7) cash match; 8) preference points for assisting the state in citing a reentry facility; and, 9) preference points for assisting the state with citing mental health day treatment and crisis care facilities and the continuum of care for parolees after discharge from parole.

The initial number of points designated for preference points for assisting the state in citing a reentry facility and the citing of mental health day treatment and crisis care facilities and the continuum of care for parolees after discharge from parole was 75 and 50 points respectively. At the November 14, 2007 “feedback session”, it became evident to the Jail Construction ESC chair and co-chair that the points for assisting the state with the siting of a reentry facility needed to be increased based upon public comment. Immediately after the “feedback session”, the chair and

co-chair met and agreed to increase the points for this preference from 75 to 150 points. The chair emailed a letter to the ESC members recommending that the preference points for counties assisting the state with siting a reentry facility should be increased from 75 to 150 points based upon public comment. The ESC members concurred with the chair's recommendation and the RFP was amended.

The amended preliminary RFP was presented to the CSA Board for action at the December 13, 2007 Board meeting. The CSA Board has the ultimate authority for accepting, amending or rejecting the proposed recommendations from the Jail Construction ESC.

**8. As the Board creates a formula for granting \$750 million for county jail construction, how does it propose to divide the funds between the smaller more rural counties and the larger more urban counties?**

At the September 24, 2007 Jail Construction ESC meeting, the ESC proposed to divide the \$750 million dollars in lease revenue funding authorized by AB 900 (Phase I) into three separate categories of funding. The ESC relied on the Department of Finance (DOF) January 2007 general population data, and they divided the \$750 million dollars as follows:

Large counties (700,001 population and above): \$600 million.

Medium counties (200,001 to 700,000 population): \$100 million.

Small counties (up to 200,000 population): \$50 million.

The ESC also proposed establishing a cost cap to alleviate the possibility that one county could receive a disproportionate share of funding. The ESC chose not to impose a cost per bed cap, but they agreed that a per project cap should be imposed. Relying on the DOF general population data from January 2007, they established cost caps as follows:

Large counties - \$125 million in state funds per project

Medium counties - \$25 million in state funds per project

Small counties - \$12.5 million in state funds per project

The primary reasons for dividing the funding into three separate categories goals of the ESC were to ensure that small, medium and large counties could compete with similar sized counties, and to provide as many counties with the opportunity to compete for a portion of the jail construction funding. The ESC also recognized that AB 900 specified that 4,000 jail beds are under construction or sited, and at least 2,000 of the original reentry beds are under construction or sited before \$470,000,000 million dollars in lease revenue funding is authorized in Phase II.

The Jail Construction ESC held a "feedback session" on November 14, 2007 to allow counties and interested parties to comment on the preliminary RFP. Based upon comments made at this meeting, the ESC chair and co-chair agreed to amend the RFP to increase the funding for small counties from \$50 million to \$100 million and a cost cap increase from \$12.5 million to \$20 million; medium counties from \$100 million to \$150 million and a cost cap increase from \$25 million to \$30 million; and, large counties reduction from \$650 million to \$500 million and a cost cap decrease from \$125 million to \$100 million. The ESC chair mailed a letter to the ESC members proposing to amend the RFP to incorporate the above changes, and the ESC members concurred with the amendments.



**9. Do you plan to factor in counties that are proposing to incorporate innovative energy-efficient projects or use of green building products in their construction plans? How?**

As a board member I am very supportive of any proposals utilizing sustainable or “green” building in the design, construction, or operation of buildings that support conservation of our natural resources and reduce their overall impact on the environment. While compliance is voluntary it will be one factor considered in the evaluation of proposals.

**Peace Officer Selection and Training Standards**

The reorganization of 2005 established a January 1, 2007, deadline for CSA to set minimum standards for state correctional facilities. However, several board members have indicated that the board does not have the resources to meet this goal.

**10. Please describe the current status of this effort and what steps have been taken to obtain funding and staff to fulfill this part of the CSA mission.**

With the expansion of the duties and responsibilities for CSA Staff since the reorganization in 2005 they have continued to provide service to its already existing constituents and stakeholders. While the legislation amending the statute and giving CSA new authority, it did not provide sufficient funds for staff to accomplish these duties. Lack of funding has hampered CSA staffs ability to be fully successful in their duties because of these constraints.

As it relates to selection and training standards CSA has partnered with CSU Sacramento in 2005 to assist in the development and selection and training standards with the limited resources that were available. The budget concepts proposals for FY 06/07 and FY 07/08 identified the additional resources needed to meet these new mandates. Unfortunately these requests were not funded because of competing CDCR budget priorities

In January of 2007, CSA staff met with CDCR Administration and was given approval of funding to complete the job analysis research which is the foundational step to the development of standards. The final report on the job analysis for the primary classifications of Correctional Officer, Youth Correctional Officer and the Youth Correctional Counselor for the California Department of Corrections and Rehabilitation in December of 2007.

At this time CSA’s Administration is meeting with CDCR to address the resources needed to meet project demands and determine if additional funding is available to prevent delays in the project completion which is scheduled in December of 2009.

**11. How is the Board addressing other responsibilities such as spelling out the duties of correctional officers and other correctional jobs or validating the test given to correctional officer applicants? What is the timeframe for completing these duties?**

The CSA Board receives routine informational updates from CSA staff on the standard setting responsibilities for the selection and training of state correctional peace officers also know as the Job Components Analysis Project (JCAP). This project will be completing the job analyses for three major classifications.

Based on this new research in January of 2008 CSA staff will begin the initial steps toward development of minimum standards for selection and training of these classifications.

In 2006 CSA staff was requested to redirect its focus and examine CO/YCO/YCC written exams and determine the feasibility of combining them into one exam to achieve efficiencies. That review was conducted and it was determined that an interim exam needed to be developed until such time as a full job analyses was completed and selection tools could be established.

The Board has been provided with updates regarding the development of this exam which was completed in December of 2006 and implemented by CDRC in January of 2007. JCAP staff in conjunction with CSUS has continued to develop, review, revise and analyze additional exam questions for an item bank for future versions of the test. The next version of the exam will be completed and available to CDRC for implementation in January 2008. This exam allows CDRC to continue to test applicants for the three different job classifications fairly, without risk of legal liability or challenge.

### **Local and State Facility Responsibility**

Historically the board staff has said that the keystone to its success has been taking a collaborative approach, working with counties to get them to meet standards. Critics, however, say that CSA "has no teeth," and needs additional tools so that, if needed, it can compel counties to meet its standards.

#### **12. How often does your staff inspect a county jail or juvenile hall? Do they make surprise visits? Do you believe the number of visits are sufficient?**

Currently CSA staffs conduct inspections at local adult and juvenile facilities once every two years in accordance with Penal Code Section 6031.1 and Welfare and Institutions Code Section 209 and 885. CSA staff also provides ongoing technical assistance to facilities, based upon their needs such as onsite construction project review, or compliance issues.

CSA has worked hard to form collaborative working relationships with all stake holders involved with the adult and juvenile facilities across the state. These relationships are essential in the biennial inspection cycle. CSA has a proven history of moving counties into compliance utilizing a two year cycle that includes pre-inspection briefings, technical assistance, inspections, and regulation revision. CSA staff does not conduct surprise visits as they are counter productive and do not foster trusting collaborative relationships between local agencies and the CSA.

Because of the relationship between CSA staff and stake holders additional inspections do not seem warranted during the current fiscal crisis.

#### **13. Are you able to personally visit facilities and familiarize yourself with conditions? If so, what have been your findings? If not, how do you learn about these issues?**

I have and will continue to visit facilities across the state. During these visits I have had opportunities to observe programming and conditions that have been both positive and negative; I have taken away lessons from both. With my primary job duties as Chief Probation Officer in



Fresno County I operate three juvenile facilities which require me and my staff to remain current title 15 and other new initiatives regarding youth in our care and control. In July of 2006 we opened a new 480 bed facility which necessitated a great deal of interaction with CSA and Title 15 guidelines.

**14. Do you believe the authority has sufficient power to ensure that needed changes are made after inspections? Do you need additional enforcement tools?**

In my view the CSA has sufficient power and enforcement tools available to ensure that needed changes are made following an inspection.

**Lawsuit**

In a taxpayer lawsuit filed in April 2006, the Prison Law Office, on behalf of Candace Waters, alleged that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate the law." It asserts that the authority fails to crack down on counties that repeatedly violate the law. The suit also alleges that CSA fails to disclose violations to counties, require plans to fix the problems, and identify facilities that are "unsuitable for the confinement of minors."

**15. Please describe what steps CSA has taken to respond to the lawsuit and the status of the litigation.**

Because it is likely I will be a party in this litigation I will refer your inquiry to:

Steven Gevercer, Deputy Attorney General  
Department of Justice  
Office of the Attorney General  
(916) 322-7487

**Education Requirements**

Among many other requirements, CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of their inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers.

**16. What oversight do you provide to ensure the inspections are complete and accurate?**

As board members we must rely on CSA staff and the biennial inspection process to ensure complete and accurate inspections. When a compliance issue is identified the CSA Board oversight comes into play to insure areas of identified non-compliance is addressed and corrected pursuant to section 209 (d) of the Welfare and Institutions Code. Board members are always welcome to contact staff and make inquire about specific issues they may have regarding any local juvenile detention facility in the state. These issues may include, but are not limited to education.

**17. What role should CSA play in ensuring better educational opportunities for the incarcerated? What is the appropriate action for the authority to take when it finds that a county is not meeting its obligation to provide adequate space for classes?**

Among many other requirements, the CSA is responsible for inspecting local juvenile and adult detention for compliance with state regulations. As part of the inspections, authority officials determine if the facility is in compliance with Section 1370, Title 15, California Code of Regulations (CCR). This section requires juvenile detention facilities provide an education program that complies with the State Education Code and County Board of Education policies. Section 1313, Title 15, CCR requires the Superintendent of Schools to annually access the educational program. Authority staff relies on this annual report when determining compliance with regulations. Authority staff does not access the quality of the education programs within juvenile detention facilities, they only access compliance with the applicable Title 15 regulations.

If areas of non-compliance are discovered during the inspection, they are detailed in the inspection report. The inspection report is then provided to the facility administrator, facility manager, presiding Juvenile Court Judge, the county Chief Administrative Officer, the chair of the Board of Supervisors, and the chair of the Juvenile Justice Commission. As required in Section 209, Welfare and Institutions Code, the county has 60 days to complete and submit to the CSA a corrective action response. The county has 90 days after the completion of the corrective action response to correct the compliance issue. If the county fails to correct the compliance issue within these time frames, the county will be required to come before the CSA Board where the Board will make a determination of suitability. If, after examining all relevant facts surrounding the compliance issue, the CSA Board determines the facility is not a suitable place for the confinement of minors, the finding will be posted on the CSA website.

1. With the passage of SB 81, more youthful offenders will remain under county jurisdiction rather than state jurisdiction. What steps has CSA taken to prepare for its increased oversight responsibilities due to the passage of SB 81?

SB 81 expands the burden of ensuring the safe operation of local juvenile detention facilities on the CSA and the State. In order to house wards as specified in SB 81, this statute requires counties to apply to the CSA for approval of a county institution established for the purpose of housing juveniles as a suitable place for the detention or commitment before the facility can house an individual under the jurisdiction of the juvenile court who is 19 years of age or older but under the age of 21 where the detained person will come into contact with persons under 18 years of age that are detained at the county institution. Furthermore, SB 81 requires CSA to review and approve or deny the application of the county within 30 days of receiving notice of this proposed use.

At this time the CSA is awaiting response for additional resources. In an effort to meet the intent of the legislation and in-lieu of additional resources being provided to implement the aforementioned approval process, the CSA Board, at their November 8, 2007 meeting, approved the following approval process by which approval or denial will be based upon: CSA staff will require counties submit detailed plans that address the programming, capacity and safety issues associated with the housing of older offenders as specified in the new legislation. CSA will utilize current Title 15 and 24, California Code of Regulation requirements and current Juvenile Justice Delinquency Prevention Act requirements when assessing a facility's programming and capacity. Assessing a facility's safety will require



CSA staff to rely on their experiences obtained during previous onsite visits and the facility's regulation compliance history. CSA staff would then notify the county within 30 days of their approval or denial of the application. During the biennial CSA inspection, authority staff will further scrutinize the facility's ability to meet the intent of Section 208.5.

**18. With the passage of SB 81, more youthful offenders will remain under county jurisdiction rather than state jurisdiction. What steps has CSA taken to prepare for its increased oversight responsibilities due to the passage of SB 81?**

The recent passage of SB 81 expands the burden of ensuring the safe operation of local juvenile detention facilities on the CSA and the State. In order to house wards as specified in SB 81, this statute requires counties to apply to the CSA for approval of a county institution established for the purpose of housing juveniles as a suitable place for the detention or commitment before the facility can house an individual under the jurisdiction of the juvenile court who is 19 years of age or older but under the age of 21 where the detained person will come into contact with persons under 18 years of age that are detained at the county institution. Furthermore, SB 81 requires CSA to review and approve or deny the application of the county within 30 days of receiving notice of this proposed use.

Currently CSA is awaiting response for additional resources. In an effort to meet the intent of the legislation and in-lieu of additional resources being provided to implement the aforementioned approval process, the CSA Board, at their November 8, 2007 meeting, approved the following approval process by which approval or denial will be based upon: CSA staff will require counties submit detailed plans that address the programming, capacity and safety issues associated with the housing of older offenders as specified in the new legislation. CSA will utilize current Title 15 and 24, California Code of Regulation requirements and current Juvenile Justice Delinquency Prevention Act requirements when assessing a facility's programming and capacity. Assessing a facility's safety will require CSA staff to rely on their experiences obtained during previous onsite visits and the facility's regulation compliance history. CSA staff would then notify the county within 30 days of their approval or denial of the application. During the biennial CSA inspection, authority staff will further scrutinize the facility's ability to meet the intent of Section 208.5.

## **Grant Administration**

**19. What oversight does the board perform to ensure that funds are being spent on the stated purpose of grants? How does the board determine whether programs are achieving desired results?**

The grant and programs funds are expended in accordance with program requirements and CSA provides oversight that is consistent with federal and state legislative requirements. Generally Accepted Accounting Principles, and prudent administrative practices, are used whenever possible. The CSA Board has charged staff with regular monitoring of both programmatic and fiscal process. CSA oversight exists at several stages of program development and implementation, including but not limited to:

- (SAG) members, and Subject-Matter Experts to Executive

- Steering Committees (ESC's) charged with program development, proposal rating, and identification of performance outcome measures;
- Approval of initial program timelines and reporting schedules regarding individual progress reporting and submission of quarterly fiscal invoices when applicable;
- Utilization of state contracts, and/or Grant Agreements, approved locally by Governing Boards (e.g. Board of Supervisors, City Council or Board of Directors) and local planning entities (i.e. Juvenile Justice Coordinating Councils), and signed by local department heads ensuring that program activities, proposed budgets, and desirable programmatic and fiscal benchmarks, as well as outcomes are formalized;
- Presentation of updates regarding programmatic and fiscal status at regularly scheduled CSA meetings;
- Regular monitoring and technical assistance of projects by CSA staff as required; and
- Review and approval of annual statewide reports including summary of both fiscal and programmatic findings, as required.

As CSA is not directly involved in the disbursement of funds to counties for the Juvenile Justice Crime Prevention Act (JJCPA), we are not considered the fiduciary agent for this program. CSA coordinates administration of this program with the State Controller's Office (SCO). The SCO administers the JJCPA funds and disburses them directly to each county and ultimately accounts for any unspent monies. As indicated in the enacting legislation, CSA is responsible for review of each county's plan and development of the annual statewide report on legislatively required outcomes. Similarly, the CSA while providing oversight of the Youthful Offender Block Grant (YOBG) and Juvenile Justice Development Plans as described in Senate Bill 81, is not directly involved in the actual distribution of these funds, save for the 5 percent of the YOBG that is disbursed to counties due to unforeseen circumstances. It is noted that the Governor authorized the Department of Finance to coordinate with the State Controller's Office in disbursement of the YOBG funds for FY 2007-08.

**20. Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the CSA board protect against potential conflicts of interest?**

It is imperative that any board members with potential conflicts must recuse themselves for the reviewing, rating, or judging of any proposals or situations in which a bias may be perceived. This recusal is most often applicable when a Board Member or Committee Member's particular agency or department, or affiliated agencies or departments from within the same jurisdiction, are entered into competition for grant funds.



Linda Penner, Board Member  
Corrections Standards Authority

LP:sf

**Senate Rules Committee – CSA Board Members Response**  
**Mr. Travis F. Townsy**  
**Rank and File Representative, State Adult Correctional Facility**

1. Please provide a brief statement of your goals. What do you hope to accomplish during your term on CSA? How will you measure your success?

Initially, I was uncertain about becoming a bureaucrat; however; since gathering information about the mission and goals of the California Standards Authority (CSA). I like the ideal of being a part of a comprehensive network, working towards restoring public confidence in the California Correctional system. I would personally like to help bring resolution to the communication "Gap" between administration and line staff. I will measure my success primarily by my level of commitment , "you get out what you put in", towards the core values, integrity, accountability, Justice, collaboration between the Department, stakeholders and the well being of Correctional workers.

2. What training did you receive to help you understand the various responsibilities of the CSA?

I was given a New Member orientation by the Corrections Standards Authority Management Team, which lasted approximately (4) four hours, I was provided with a New Member Briefing Binder, which contained the mission statement, several penal codes, Welfare and Institution codes and many guidelines regarding the board agenda and meetings references and of course On-the-job-training!

3. The CSA board meets every other month. Is this often enough for the board to carry out its increasing number of missions? How do you stay informed of the CSA's activities?

The CSA board meetings every other month are sufficient; however, if it becomes necessary to have a special session meeting because of some legislative intent that needs more clarity, resolution or amendment, the board is more than willing to convene.

I stay informed through the CSA website, newspaper and the CSA staff-who indeed are my "technical resource".

**Senate Rules Committee**

DEC 17 2007

**Appointments**



4. In recent written and verbal testimony before the Little Hoover Commission, CSA's executive director stated that CSA has several concerns about implementing the juvenile justice realignment legislation enacted earlier this year. What changes need to be made to ensure the successful implementation of this legislation? How will you be involved in the overseeing the implementation and oversight of CSA's responsibilities in this regard?

As you of the Senate Rules Committee well know the legislative intent of SB191 was unsuccessful, somewhere between the 'house' and implementation the outcome was not achieved. Now SB81 has been implemented to address the juvenile justice realignment act. "Best Practices" generally are the most reliable experiences used by CSA staff. Previous visits, facility's regulation compliance history are other factors relied on to develop an interim plan for the approval or denial process for local juvenile detention facilities as required by the welfare and Institution code, 208.5

Although each requirement of SB81 is being met, the most serious concerns regarding SB81 are that no resources were allocated to handle CSA administrative duties. In a letter drafted by Mr. C. Scott Harris, CSA Executive Director, on October 11, 2007 to the Governor on behalf of the CSA board members. Mr. Harris addressed the matter, by requesting a minimum of eight new positions to fulfill our responsibilities on two major provisions in SB81. 1) the additional on-site monitoring of local facilities when offenders are shifted to counties from DJJ facilities and 2) The administration of \$100 million for local facility construction grants.

5. What, in your view, should be CSA's top priorities? If CSA does lack resources, how will you prioritize projects and activities?

The authority's top priority is commitment to public and employee safety through evidence based crime prevention and recidivism reduction strategies, I concur!

If DSA does lack resources, I plan on prioritizing projects and activities, first on needs and safety concerns to at minimum be in compliance with the provisions of federal guidelines (penal codes and welfare/institution codes).



- 6. When you meet at a correctional facility such as the Napa County Youth Detention Center where the November meeting was held, do you have an opportunity to tour the institution? What lessons do you take away from these site visits that you can apply to your decision –making?**

When the Board meets at various correctional facilities or juvenile detention facilities, we've had the opportunity to tour the institution.

I always take the opportunity to look at the new programs and updated learning tools, to access where the resources are being allocated. I also look at the living quarters and talk discreetly to the wards/inmates to try and gather their personal and genuine feelings regarding their confinement and positive opportunities to "better their re-entry into mainstream society.

### **Assembly Bill 900**

Under AB 900, Chapter 7, statutes of 2007, CSA is to approve plans for \$750 million in new county jail facilities. Among other things, CSA is to give "funding preference" for new jail construction to counties that assist the state in placing reentry facilities for inmates approaching parole. In addition, the authority is to give preference to counties that assist the state in placing mental health day treatment and crisis care facilities and for counties that provide mental health and substance abuse care to parolees.

- 7. In a draft proposal submitted to the board in November, a CSA executive committee established a ranking system based on 1,050 points. It awarded 75 points for reentry facilities and 50 for mental health programs. How were these factors weighted in the final proposal?**

After the feedback session in November, the greatest concerns and questions from the public comment were the disparity and disadvantages of the small communities in comparison with the medium and larger counties competing for SB900 funds. At the special session in December, Mr. J. E. Tilton, The Board Chair, proposed that the points awarded to re-entry be doubled from 75 to 100 and likewise for the points awarded to mental health from 50 to 100 in order to give the two factors heavier weight to compete more effectively with larger counties regarding over-all points in the final RFP.

The other factors included: 1) project need; 2) detention alternatives; 3) scope of work and project impact; 4) administrative work plan; 5) net gain in beds; 6) cost effectiveness; 7) cash match.

The ESC (Executive Steering Committee) was instructed to provide an amended RFP (Request for Proposal) at the December special session in which they complied. The board approved the final amended RFP. Public approval of the newly amended RFP appeared to be positive.

- 8. As the board creates a formula for granting \$750 million for county jail construction, how does it propose to divide the funds between the smaller more rural counties and the larger urban counties?**

On Sept 24, 2007, Jail Construction ESC meeting, the ESC proposed to divide the \$750 million dollars in lease revenue funding, authorized by SB900 phase 1. The funds would be divided into three separate categories of funding, The ESC relied on general population data collected from the Department of Finance; however, the December meeting the \$750 million was divided differently then recommended by the DOF, first a \$30 million cap per project for small counties rather than a \$12.5 million cap per bed, secondly, medium sized counties would be increased from, cap per project, a maximum of \$25 million to \$75 million. Larger counties on the other hand were decreased to \$100 million. The total amount of funds also was divided up into two parts, first small counties competing for \$100 million dollars and the other \$650 million dollars divided among the competitors in the large and medium counties.

- 9. Do you plan to factor in counties that are proposing to incorporate innovative energy-efficient projects or use of green building products in their construction plans? How?**

Yes, "green" building is encouraged. "Green" building conserves natural resources and reduces their overall impact on the environment. Compliance is voluntary, but will be one factor considered in the evaluation of proposals when assessing proposed scope of work and project impact. Project need is rated as the highest evaluation factors and comprehensively (all factors totaled) can max 250 points, remember "green" is a contemporary concept-relating to healthy environment.

## **2005 Reorganization-Minimum Standards**

The Reorganization of the 2005 established a January 1, 2007, deadline for CSA to set minimum standards for state correctional facilities. However, several board members have indicated that the board does not have the resources to meet this goal.

- 10. Please describe the current status of this effort and what steps have been taken to obtain funding and staff to fulfill this part of the CSA mission?**

In 2006/2007, \$19.450 million dollars in local training subvention funds were restored to local correction agencies along with the correctional training funds to offset cost, after having been diverted to the general fund for three years. CSA has established and continually maintains statewide standards to the best of their abilities, giving the limited resources. With the limited funds in



2005 CSA initiated a contract with California State University Sacramento to assist in the development of selection and training standards. In 2006/07 and 2008 F/Y funding proposals were submitted to CDCR Administration but were unable to compete with other priority proposals. Finally, in January 2007, CSA again met with CDCR administration and received approval of funding to complete the job analysis research, a stepping stone in the development of standards; therefore, primary selection and training standards of C/O/YCO and YCC have been completed on target. As resources become available CSA is enabled to fulfill this part of CSA Mission!

**11. How is the board addressing other responsibilities such as spelling out the duties of correctional officers and other correctional jobs or validating the test given to correctional officer applicants? What is the timeframe for completing these duties?**

The on going Saga, of obtaining resources to complete certain task is not an exception to this project. The CSA staff routinely updates the board on the progress of this agendas, significant process has been made nonetheless. Standards and Training for Corrections has established Core training courses, these core task for the position of Adult Corrections Officer, Probation Officer and Juvenile Correctional Officer, they include job knowledge and performance test. The job analysis identifies the core task performed by correctional Officers and based on the frequency of each task performed, the criticality of the task and how common the task is to all the agencies statewide. Each agency's compliance and adherence to regulations, is determined for each year of STC funded training year. All counties and cities participating must achieve compliance by June 30<sup>th</sup> of each fiscal year.

The target dates for the development of standards for these specific classifications is December 2009 and the projected timeline for the implementation of the most recent exam, one exam all three classifications, is January 2008; however, funding is an unforeseeable determinant!

**Local and State Facility Responsibility**

Historically the board staff has said that the keystone to its success has been taking a collaborative approach, working with counties to get them to meet standards. Critics, however, say that CSA "has no teeth," and needs additional tools so that, if needed, it can compel counties to meet its standards.

**12. How often does your staff inspect a county jail or juvenile hall? Do they make surprise visits? Do you believe the number of visits is sufficient?**

CSA staff is required to conduct an inspection at local adult and juvenile facilities once every two years, in accordance to the Penal Code (6031.1 Welfare and Institutions Code 309 and 885. CSA field staff may make a sufficient amount of visits relative to concerns that may eventually place a facility in a below minimum suitability position. Certain criteria must be sustained in accordance with the title 15 and title 24. Surprise visits are sometimes necessary and warranted. CSA staff has been known on various occasions to make surprise visits!

In my opinion, unless there are concerns or issues concerning child welfare, safety issues or security problems that may later subject the agency to litigation. I believe "Our (CSA's)" visits are sufficient.

**13. Are you able to personally visit facilities and familiarize yourself with conditions? If so, what have been your findings? If not, how do you learn about these issues?**

Generally, as a Board member, I've only been privy to personally tour a county or juvenile hall, when a Board meeting is scheduled and I'm invited to be escorted around the facility by designated staff. Usually the facilities have been modern-state of the Art type.

I rely mostly on the inspection and update data obtained by CSA staff.

**14. Do you believe the authority has sufficient power to ensure that needed changes are made after inspections? Do you need additional enforcement tools?**

If necessary changes are mandated after finding a facility below the minimal regulation standards, stated in title 24 and title 15. The determination of unsuitability is placed on the CSA Board agenda for hearing and findings by the Board. The agency and other stakeholders are notified of the recommendations and the pending CSA Board hearing. Ultimately, the facility can be deemed unsuitable for the confinement of minors. The results of the Boards findings will be posted on the internet.

Based on my limited experience on the board, I've only been privy to the malpractice of Sacramento Juvenile Hall; refer to Board meeting March 2007. They've made positive changes in "Giant Steps" to avoid the tense scrutiny and timelines implemented by The 'Authority'.

Finally, as of this stage in the development of the CSA, formally BOC, the enforcement tools along with a great management team-headed by C. Scott Harris and other willing and competent staff appears to be sufficient. The CSA



diligently seeks to fulfill the mission and goals proposed by the coalition of local, state, adult and juvenile correctional associations.

## **Lawsuit**

In a taxpayer lawsuit filed in April 2006, the Prison Law Office, on behalf of Candace Waters, alleged that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate the law." It asserts that the authority fails to crack down on counties that repeatedly violate the law. The suit also alleges that CSA fails to disclose violations to counties, require plans to fix the problems, and identify facilities that are "unsuitable for the confinement of minors."

### **15. Please describe what steps CSA has taken to respond to the lawsuit and the status of the litigation.**

Since I was not initially a Board Member when the lawsuit was filed I've been instructed to defer all questions regarding this matter to our legal representative.

Steven Gevercer, Deputy Attorney General  
Department of Justice  
Office of the Attorney General  
(916) 322-7487

## **Education Requirements**

Among many other requirements, CSA is responsible for ensuring the education of minors in county juvenile lockups and the compliance of local officials with state regulations. As part of their inspections, authority officials are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, and ensure there are enough teachers.

### **16. What oversight do you provide to ensure that inspections are complete and accurate?**

The CSA is mandated, under section 209(e) Welfare and Institution Code, To determine "Suitability" of all Juvenile halls, when a juvenile hall is not in compliance with one or more of the minimum standards adopted by the CSA and where the issues of non-compliance arise. The facility shall be deemed unsuitable for the confinement of minors if the totality of conditions pose a serious risk to health, safety or welfare of minors confined in facility.

CSA Board members rely heavily upon the information and update gathered by CSA field staffs biennial process. CSA will continue to inspect and monitor all Juvenile facilities as frequent as possible. As a board member my

oversight comes into play when non-compliant issues are presented to the Board.

**17. What role should CSA play in ensuring better educational opportunities for the incarcerated? What is the appropriate action for the authority to take when it finds that a county is not meeting its obligation to provide adequate space for classes?**

CSA must continue to hold juvenile halls accountable for complying with issues pertaining to education. Education is paramount!

If a County is in non-compliance with educational programs, the noncompliance issue is first turned over to the county Board of education. The Superintendent of Schools is in charge of determining compliance with regulations. If the county does not correct the problem within 90 days, the county will be required to come before the Board, if the Board determines unsuitability. The facility will be deemed not a suitable place for the confinement of minors, and the findings will be posted on the CSA website.

**18. With the passage of SB 81, more youthful offenders will remain under county jurisdiction rather than state jurisdiction. What steps has CSA taken to prepare for its increased oversight responsibilities due to the passage of SB 81?**

SB81 expands the burden of safe operation of local juvenile detention facilities on the CSA and the state. Mr. Tilton, Secretary of CDCR and Chairman of The CSA Board, stated, that no additional administrative funding was supplied to CSA to handle the burden placed upon them by SB 81. Without resources it is hard to meet the intent of the legislators; however, CSA is required to review and approve or deny the application of the county within 30 days notice of proposed use regarding the housing of an individual under the jurisdiction of the juvenile court who is 19 years of age or older but under the age of 21 where the detained person will come into contact with persons under 18 years of age that are detained at the county institution.

Currently CSA is awaiting approval of additional resources to carry out the intent of legislation.

## Grant Administration

**19. What oversight does the board perform to ensure that funds are being spent on the stated purpose of grants? How does the board determine whether programs are achieving desired results?**

The Board uses several options to oversee funds allocated for grants, Appointment of CSA members, State Advisory Committee, Subject matter experts, Executive Steering Committee-all charged with overseeing program development and ensuring, fiscal benchmarks and outcomes are formalized in a timely matter.

The Board receives regular updates at each board meeting and all new updates at separate meeting regarding progress are updated via e-mail or hardcopy mail. Board members may also contact the respective CSA management team or CSA field representatives whenever there's a concern or area of concern or confusion. The Board determines if programs are achieving desired results by regular updates conducted by the CSA staff members and their technical expertise concerning the various issues that we're beset with in our efforts to bring resolution to CDCR.

**20. Given that some board members represent local agencies or other entities that may be eligible to compete for certain grant funds, how does the CSA board protect against potential conflicts of interest?**

The CSA Board protect against potential conflicts of interest, by simply requiring that the Board member excuse themselves from the review, rating or judging of proposal of situation in which they could assume to be perceived as bias.





Senate Confirmation  
Responses to Senate Rules Committee Questions  
Askia M. Abdulmajeed  
Juvenile Parole Board Commissioner  
December 19, 2007

**Background**

The Youthful Offender Parole Board for many years was the paroling authority for youths committed by the juvenile court to state juvenile institutions. But over the past three years the board has undergone statutory change. In the latest change effective January 1, 2007, the youth members of the board became part of the state Division of Juvenile Justice in the Department of Corrections and Rehabilitation.

The duties of the five members of the Juvenile Parole Board include establishing the terms and conditions of parole for soon-to-be-paroled youthful offenders, determining whether parolees should be returned to an institution for parole violations, and conducting annual reviews to assess progress for an offender.

1. *Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure on the board? How will you measure your success?*

It is my personal goal to conduct fair, impartial and consistent hearings with careful considerations made with informed and rational decisions. Hopefully, my success will be measured by the difference that one Commissioner can make with evidenced-based results that uphold public safety through increasing success within the institutions as well as on parole by youthful offenders.

2. *What in particular has prepared you to evaluate the readiness of youthful offenders to parole and be independent citizens?*

In an informal sense, many years of working with, counseling, mentoring and guiding youth, within and outside of the Juvenile Justice System, has provided me with the requisite personal knowledge and practical experience to succeed in this important endeavor. And more formally, the intense observation of experienced commissioners and relevant training that I have received; specifically in Title 15, Crime Prevention and Corrections, Article 2, 4945 General Policies which sets forth Guidelines for determining parole readiness.

Senate Rules Committee

DEC 18 2007

Appointments

## Training and Policies

**The reorganization of the correctional system, effective July, 2005, requires new commissioners to undergo a minimum of 40 hours of training within 60 days of appointment, and annually thereafter.**

3. *Please describe your initial training, including content and details of who provided the instruction and the length of the training. In your view, did it adequately prepare you for your job?*

My training as a Juvenile Parole Board Commissioner began within 72 hours after being sworn in. The Board Representative of the Division of Juvenile Justice (DJJ) Juvenile Parole Board trained me daily, over a period of several weeks on Youth Authority Title 15 Regulations, knowledge and completion of Board Orders, the California Penal Code, provided on-the-job observation and participation in the process, deliberation, decision-making of Parole Consideration Hearings, Panel Board and Referee procedures and the proper completion of paper work. Yes, I feel confident in my orientation, process and decision making. My training has remained ongoing also through one and two trainings held monthly, from March through December 2007. Topics have included, The Role, Practices and Principles Governing a Youth Parole Authority, An Overview of California's Juvenile Justice System; Overview of Victims Rights and Services; Research and Evaluation of DJJ Youth; Introduction to Evidence Based Practices and Risk Based Assessment in Juvenile Rehabilitation; Mental Health Diagnoses, Evaluation, Treatment of DJJ Wards; Overview of the Juvenile Justice System in California, Parole Supervision, Conditions, and Placement of DJJ Parolees with Mental Health Issues; Cognitive Behavior Therapy and Criminal Thinking Errors; Aggression Replacement Training.

4. *Much of your work takes place at DJJ Facilities. How much time did you spend observing DJJ rehabilitation programs and living conditions during your training? How much time do you spend observing now?*

Having formally worked in the California Youth Authority in the late 1990's, as a Loaned Executive, Mentor Program Coordinator and Chaplin, I have previous experience with the rehabilitation programs and living conditions. When I returned to the DJJ as Juvenile Parole Board Commissioner, I made it a policy of mine to take a fresh tour and to observe informal group participation at as many facilities as possible. Also, the DJJ Parole Board has held a number of Board Meetings/Trainings on site at DJJ Facilities.

5. *Do you receive legal or other guidance on the most effective strategies in dealing with juvenile wards, witnesses, and attorneys when conducting a hearing?*

Legal guidance for DJJ Commissioners is provided on an ongoing basis by specific CDCR lawyers on wards' rights, DDMS, witnesses and attorneys. The most recent such training was conducted December 12 and 13, 2007, specifically on the subject of

the Parole Revocation process. Over a period of two days, CDCR Attorneys trained us on the role of the attorney, the role of the adjudicator, assessing evidence and meeting objections.

6. *When you consider parole for a ward, how have you been trained to determine whether he or she is adequately rehabilitated? To which factors do you give the most weight?*

My consideration, deliberation and decisions are based on documented and presented evidence such as the risk to public safety, the committing offense, victims' impact, gangs, drugs, anger, DDMS history, support, relapse plan, future parole prospects. In addition, consideration is also given to the motivation, or lack thereof, of the ward toward the treatment, training and education, made available to them and the indicators of success or failure, within a controlled environment as well as upon re-entry in to the community.

7. *How have you been trained to assess the quality of programming—including the adequacy of classroom instruction—the ward received? What are the uniform criteria used by all commissioners and hearing officers?*

When I tour the facilities, visit classes, observe group sessions, speak with the wards, I receive first-hand feed-back on the quality and response to the programming and classroom instruction the wards receive. In addition, Commissioners must attend/participate in first and last annual reviews of wards to review their treatment, training and education, initially as a means of evaluation, and finally as reminder to them to prepare for parole consideration.

8. *When considering parole revocation, what factors have you been trained to take into account? What additional training do you believe would be useful?*

Many factors are weighed when considering parole revocation. Some of the primary ones are, determining if all less restrictive placement options in the community have been exhausted to the point where revocation is appropriate in assisting the ward to redirect his/her behavior? Is the violation behavior related to his/her past history of committing offense? Has the ward previously been subjected to alternative sanctions, such as being continued on parole, with some restructuring? Is there compelling evidence of an escalation in negative or dangerous behavior on parole? Are there new law violations? Has the ward been generally meeting his/her conditions of parole, such as reporting in, attending classes, going to school, working full-time, paying restitution, completing community service, maintaining stable placement, registering as a gang member or sex offender? I anticipate and eagerly await additional training that will be provided particularly concerning conducting Probable Cause Hearings.



## **Parole Revocation Hearings**

Under a federal court agreement, in a case known as *Valdivia v. Schwarzenegger*, adult parole violators have the right to counsel and other due process protections in parole revocation hearings. Now, similar rights are being sought for juveniles in the *L.H. v. Schwarzenegger* case. A proposed settlement is being reviewed by the administration. As part of the proposed settlement, the Division of Juvenile Justice has prepared a plan that would provide legal counsel for all parolees subject to parole violation allegations.

9. *Have you been consulted about the proposed settlement regarding juvenile parole revocation? Do you believe that changes need to be made in the revocation process? If so, please spell out what those changes should be.*

Yes, I have been consulted by CDCR Attorneys concerning the case of *Valdivia v. Schwarzenegger*, and *L.H. v. Schwarzenegger*. I do support many of the proposed changes including ward representation by counsel and timely Probable Cause Hearings.

10. *In what ways are you informed about the availability of alternative sanctions when considering parole revocation? Are there additional programs that you think should be available?*

Parole agents may present plans for community based services as part of the parole revocation process as alternatives to return to custody. There is always a need for more transitional services, especially group homes, and drug and alcohol in/out patient programs.

## **Parole Consideration Hearings**

Hearings are conducted at youth facilities, adult prisons and parole offices throughout the state. Commissioners may sometimes conduct eight or nine different hearings in a single day.

11. *Is the quality of the background material you review sufficient to allow you to make informed decisions? How could it be improved?*

Yes, I feel the quality of the background materials along with detailed feedback from the Treatment Team, as well as the ward's responses to the Board's inquiries concerning his/her understanding and motivation to achieve identified goals, is sufficient to make informed decisions.



- 12. Please describe how you prepare for a parole consideration hearing. Board members typically review a youthful offender's file on the morning of the hearing. Is this your practice? If so, do you believe it prepares you adequately? How could this process be improved?*

My process is to arrive an hour prior to the scheduled hearings and thoroughly read all reports, addendums, and related information. I will highlight key facts, and write brief notes on the committing offense, institutional behavior/adjustment, completion of goals, and parole placement. I am confident that my preparation is adequate.

- 13. How do you balance the recommendations of a parole agent or another more experienced commissioner hearing the case with your own judgment of a ward's case for parole? How much weight do you place on the advice of the Division of Juvenile Justice staff?*

I strive to evaluate the progression of each person as well as the support given by his/her parole agent. However, as a Board Member, I am ultimately responsible for a professional decision, which is influenced by a number of factors, regarding public safety, family members, victims, and the ward's right to due process. Institutional staff interact on a daily/ongoing basis with the wards, hence, their in-put is valuable and appreciated by Board Members, however the greatest weight in granting or denying parole must be borne by the Commissioner hearing the case.

- 14. When you recommend that a parolee be sent to a treatment program, such as substance abuse, as part of their parole plan, how are you informed about the availability and quality of these programs? Please describe the kind of follow-up that occurs when you recommend that a parolee go to a particular program.*

As a former Deputy Director of the Department of Alcohol and Drug Programs, I possess valuable insight into the treatment of substance abuse. The DJJ Juvenile Parole Board affords each Commissioner at least one Administrative day a month, with which we are encouraged to visit and become acquainted with Service Providers. I have personally toured a number of Group Homes in Northern California that have been recommended placements for substance abuse, gang prevention, and sex offender treatment. I have represented the Juvenile Parole Board at Community Partnership Meetings in Sacramento and Stockton California, where I am able to interact with the program providers who have received funds to provide services at the County, and local levels for wards re-entering the community.

## **Time Issues**

**The Division of Juvenile Justice (DJJ) has a disciplinary system in which additional time can be added before a youth may be considered for parole. Youth can appeal these "time adds" to the board. A national team of experts who**

reviewed DJJ last year recommended that the system of “good time” be enhanced so that youths who participate in programs and stay out of trouble can earn back their disciplinary time and be considered for parole at an earlier date.

*15. From your experience, what are the factors causing increases in the lengths of stay for youthful offenders? What action, if any, would you recommend to address this issue?*

The youthful offenders who are gang entrenched, violent and disruptive for the benefit of their gang are generally the largest percentage of DDMS “Time Adds.” “Good Time/ Program Credits” are used to mitigate Time Adds. Currently, youthful offenders who program well and remain disciplinary free receive “Time Cuts” enabling their Parole Consideration Dates to be modified down.

*16. What is the board’s policy on factoring in “good time” or positive behavior? Has the board discussed the best approach to this issue? How do you make this determination?*

As a rule, there is general consensus among Board Members, to seek the potential for positive change within every young person, and the role we play in bringing about and sustaining this change, is often witnessed by our decision to concur with recommended “Time Cuts” for positive behavior.

## **Annual Reviews**

**Commissioners are responsible for an annual review of every offender’s progress.**

*18. What are the benchmarks you look for in this process? What additional information would be helpful to make the most complete assessment?*

The role of Commissioners is limited to participation in first or last annual reviews, and is to be present as a participant to determine if there are any missed or omitted treatment issues. The Commissioners may request a Psychological Evaluation for PCH, and can give wards a warning/heads up if there are too many DDMS, and will discuss questions or concerns the ward has for the Board Hearing Officer. The Commissioner will inform the ward of what is needed to be parole ready, has the ward demonstrated a changed value system. The Commissioner inquires about their parole placement and determines if the ward meets the criteria for legal counsel under the *Armstrong* case.

### **Farrell Lawsuit**

In 2004 the administration reached a landmark settlement in the *Farrell* lawsuit on the conditions of confinement in juvenile facilities. The Division of Juvenile Justice is supposed to implement a broad array of reforms, including creating smaller living units, improving education and mental health services, and bolstering safety. One of the goals of the *Farrell* case is to provide effective education and treatment programs and, under one of the remedial plans, parole is to be reviewed in the coming year.

In October the *Farrell* special master said that, “progress is halting and well behind the schedule” set forth in remedial plans. More recently the governor signed into law SB 81 (Committee on Budget and Fiscal Review, Chapter 175, Statutes of 2007), designed to reduce the population in the state system almost in half to 1,500 of the most high-risk juvenile offenders. The offenders deemed less risk to public safety will receive services at the county level.

*19. How have you been kept abreast of developments in the Farrell case? Do you believe the board should have a role in ensuring that offenders receive the treatment agreed to in the Farrell settlement?*

We meet on a regular basis at our monthly Board Meetings with DJJ staff involved in implementing remedial plans stemming from the Farrell case. I do believe that the Board has a role to play in ensuring that offenders receive agreed upon treatment and are in a good position to determine if they have and positively influence access to the treatment if they have not.

*20. What is your understanding of the timeline for Farrell implementation? Will it be accelerated now that the division will have a smaller caseload as a result of SB 81?*

We are receiving training from contractors on various instruments and treatment interventions that they are responsible for implementing in DJJ facilities. This includes Aggression Replacement Training, Motivational Interviewing, and the new risk assessment, all of which will be implemented in 2008.







Senate Confirmation Hearing  
Alvin S. Kubochi, Commissioner  
Board of Parole Hearings  
Response to Senate Rules Committee Questions  
December 19, 2007

**Statement of Goals**

- 1. *What are your goals and objectives as a member of the Board of Parole Hearings (BPH)? What do you hope to accomplish during your tenure? How will you measure your success?***

My personal goal as Commissioner is to provide timely, fair hearings for life inmates. In conducting hearings, it is the highest priority to treat all participants with respect and dignity and to assure due process rights as provided by the Penal Code and Title 15 of the California Code of Regulations. Currently, there is a backlog of cases as defined by the *Rutherford* decision and it is incumbent upon the Board of Parole Hearings (BPH) to reduce the backlog by providing timely hearings for all life inmates. While attempting to reduce the backlog, it is a fundamental principle to respect the rights of the inmate and to afford due process and therefore not force the inmate to elect which of his/her rights to implement—the right to a timely hearing vs. adequate preparation and readiness to proceed with the hearing. Success for BPH will include the reduction of the *Rutherford* backlog and providing input to the California Department of Corrections and Rehabilitation (CDCR) as to “programming” components that will provide the inmate the opportunities to obtain a parole date.

- 2. *Do you believe that an inmate convicted with an indeterminate life sentence can be successfully rehabilitated and then safely return to society? Please explain how you come to this conclusion and what you use to assist you with this analysis.***

All inmates, including those serving life sentences, have the capacity for change and rehabilitation. This belief is based upon conducting suitability hearings and 34 years in the criminal justice system as a Deputy Public Defender and a Deputy District Attorney. The determination of suitability is conducted on a case-by-case basis. There is no set recipe or formula. The factors of suitability, as outlined in Title 15, sections 2281 and 2402, summarize and constitute the issues that may be discussed and assessed during a specific hearing. Hearings should be conducted in a thorough manner and deliberations should be performed with objectivity, but not to neglect compassion and empathy for all participants. A commitment to fairness is the greatest personal attribute that I can offer.

Senate Rules Committee

DEC 18 2007

Appointments

### **Training**

- 3. *Please describe any training or other assistance you received to prepare you for your responsibilities as a board member including the approximate number of hours it took. Who provided your training?***

Before conducting hearings, BPH provided intensive training totaling 161.5 hours. Among the topics were ethics, *Rutherford* compliance, term calculations, the assistance and accommodation requirements of the Americans with Disabilities Act, central file reviews, en banc proceedings, hearing forms, case law analysis, mock hearings, and observations of suitability hearings. The instructors were experienced in each venue and provided excellent theoretical training. The mock hearings were recorded and after each session, the participants provided critical feedback. At the conclusion of the training, there were 48.5 hours of observation of hearings at institutions. As a Deputy District Attorney, I have participated in lifer hearings and received training for that purpose.

- 4. *What recommendations could you offer to improve the training of new board members? What ongoing training do you think should be provided to all board members?***

The mock hearings were the functional equivalent of a dress rehearsal and provided a real-time opportunity to experience the dynamics of the hearing process. Extending the mock trial time period and adding the participation of an experienced Commissioner would enhance the "learning curve" for new Commissioners. In addition, assigning the new Commissioner to a two-member panel(s) for a time period of two weeks to one month would enhance the knowledge and skill level of new appointees.

Currently, BPH Legal provides updates at the monthly en banc meetings. As with any suggestion for improving the training, time constraints upon BPH (*Rutherford*) are a major consideration.

- 5. *Does anyone from the BPH sit in on your hearings to provide you with feedback and assistance? If so, who and how often? Particularly in the early months of your service, did anyone review your hearings or transcripts to help you improve your skills?***

BPH headquarters is committed to providing assistance and feedback as to the quality and level of services provided. At the outset of my tenure, I was very fortunate to work with Deputy Commissioners with extensive years of experience in conducting suitability hearings. Through that synergy, I was provided critiques and observations that were invaluable for improving my performance to meet the expectations that I have placed upon myself in fulfilling the expectations of all participants. As with my previous



professional experience, I am always receptive to comments about my work product as I am committed to providing outstanding service to the public.

- 6. *What should the Legislature expect from board members regarding a consistent format for lifer hearings? Should all of the board members and deputy commissioners weigh the various factors in a consistent manner? For example, what do you believe should be the appropriate emphasis on the facts of the crime?***

Currently, all commissioners have been provided the same format upon which to conduct suitability hearings. That format includes consideration of the number and nature of the crimes committed by the inmate, prior criminal history, personal and social history before the life term, parole plans, and the inmate's behavior and programming—academics, work assignments, vocational training, and participation in group therapy. As a component of due process and fairness, an inmate has a reasonable expectation that Commissioners and Deputy Commissioners will weigh and assess the various factors in a consistent manner. As with any endeavor involving human behavior, consistency may be an objective, but individuals will have diverse experiences and outlooks. Commissioners are responsible for maintaining fairness and consistency in the conduct of hearings.

The facts of the life crime are the starting point for the analysis of each case as discussions concerning rehabilitation that include remorse and the development of insights as to the causation factors are integrally connected to the crime. The weight to be given to the facts of the life crime is an individualized process and cannot be pre-determined by formula.

- 7. *How were you trained to factor in decisions made by previous panels in denying or granting suitability?***

At the outset, Commissioners are advised to exercise independent judgment during suitability hearings regardless of previous decisions. In measuring an inmate's effort and progress, previous decisions may form a "benchmark" for assessment. For instance, a prior panel may have noted that an inmate had not made sufficient progress in upgrading vocational training and advised the inmate of that concern. A review of prior decisions to ascertain that panel's recommendations assist in providing the inmate with insights and suggestions for rehabilitative efforts as the hearing progresses.

- 8. *How should the Legislature evaluate the effectiveness of the BPH? What should we look for when we observe hearings or review transcripts?***

The measure of the "success" of BPH should include the development of an understanding not only of those inmates who "program" but include those inmates who

either do not program or continue to engage in disciplinary problems (CDC 115's). Assessing the progress and success of BPH requires a balanced perspective as not all inmates are alike nor do they program in the same manner. Success for BPH is providing timely, fair hearings for all life inmates. In addition, BPH must work in a collaborative effort with administrators of CDCR to provide programs for rehabilitation. That is, BPH must realize its place as a stakeholder and to retain a dialogue in regard to the rehabilitation process.

**9. *Which educational, vocational or self-help programs in state prisons have you observed and when? How do you know if a particular program is effective? Please explain.***

Because of time constraints, I have not had the opportunity to observe programs in CDCR. As with many functions within CDCR, I am reliant upon program administrators and instructors to fulfill their mission objectives. On a personal note, a friend of mine is an instructor for vocational training in electronics. I have been impressed with the explanations of the curriculum that have been described to me. Graduates of the electronics program are qualified for employment as an electrician upon release. Clearly, expansion of these programs in skilled vocations would be beneficial. During suitability hearings, many offenders who were committed during their youth have demonstrated maturity and personal values through participation in self-help programs such as anger management and victim awareness. Programs emphasizing the development of life skills would be a positive complement to existing programs.

**Hearing Preparation**

*Members of the BPH receive a condensed version of the inmate's file prior to the hearing. There is still confusion about exactly when the information is sent and whether or not it is complete. Because the Department of Corrections and Rehabilitation does not have the technology to transmit files electronically, all information is sent via hard copy.*

**10. *Please describe when and how you prepare for each hearing. Precisely when are files made available to you for future hearings?***

The Board Reports are delivered to my personal mailbox on the Wednesday before the week of the hearings. Upon completion of each week's assignment, I pick up the Board Reports and begin the review on Saturday and Sunday. On a weekly basis, 10-15 hours are required for preparation. In extraordinary cases, such as rescission hearings, preparation time can exceed 5 hours for one matter. During the week, additional time is required for pre-hearing file reviews, such as the central file and late documents.



**11. *How often do you estimate that the file you receive in advance of the hearing lacks key important documents such as a current psychological evaluation?***

The problems associated with late documentation such as psychological evaluations are random and varies among institutions. The issue of delinquent reports is real and infects approximately 20-30 percent of the cases each week. Related to the issue is a tactical decision by the inmate and the inmate's attorney to postpone the hearing for further evaluation and consideration of the report (in some instances, the findings of the psychologist are not supportive of release).

**12. *Do you have any suggestions for improving the dissemination of information prior to the hearing?***

Improving communication among the stakeholders—BPH, psychological evaluators, inmate attorneys, correctional staff, and the Board desk staff at the institution would enhance the dissemination of necessary information. Additionally, training among CDCR staff who are involved with the "pipeline" would create improved delivery of services related to timely hearings. A critical piece would be the development of computer programs that would track the various functions and documentation required for the hearings. The establishment of a database and a system of "flags" (such as Microsoft Outlook programs) could address many of the problems.

**En Banc Hearings**

*En Banc hearings occur each month when the full board meets in Sacramento. These hearings typically include consideration of split decisions where the two-person panel composed of a BPH member and the deputy commissioner disagree on a decision. The full board makes the final decision in these cases.*

**13. *How do you prepare for the en banc hearings?***

The material for the en banc hearings is delivered on the Friday before the hearings. The packet includes the agenda and a disc that contains the documents necessary for review of the cases. I review the material on Monday and make case notes for the hearing.

**14. *How is a sometimes lengthy hearing conducted at a prison by just one BPH commissioner and one deputy commissioner summarized for all of the other BPH members in Sacramento? Is the material you receive sufficient to allow you to make an informed decision?***

The content of the inmate's case history is on the disc. The material includes the legal documents from the county of commitment, the correctional counselor's reports

(programming), psychological evaluations, and the previous decisions. In addition, the transcript of the hearing is available at the en banc meeting room before the deliberations are conducted. There is ample information, both historic and legal, to support an informed decision.

### **Postponements**

*Based on information received from the BPH, over 27% of the hearings that you were scheduled to conduct from the time you were appointed in January 2007 through September 2007 were postponed.*

**15. Please explain why a significant number of your hearings have been postponed. What strategies would you recommend to reduce this number?**

The postponements fall into two basic categories: Postponements initiated by the panel and postponements requested by the inmate. Concerning panel postponements, the majority occur in the situation in which the previous panel either has denied parole or postponed the hearing and requested a new, updated psychological examination. At the next hearing, if the new evaluation has not been completed, fundamental fairness would be denied to the inmate by proceeding with the hearing. There are two basic situations in which prior panels order new evaluations—in denying parole, the previous panel recommends a “fresh” report for the next panel, especially if the existing report is negative. In the second category, the existing report was made more than 5 years before the hearing (the evaluation may be outdated forensically). In all cases in which the panel postpones the hearing, the inmate is present at the hearing and advised of the personal right to proceed with the hearing regardless of the issues that exist—the inmate has the statutory right to demand the hearing as scheduled. If the inmate opposes the postponement, the hearing would proceed.

As to postponements requested by the inmate, there are two distinct bases: the inmate believes that additional time is required such as the need to document parole plans, prepare for the hearing, pursue appeals in state court, or to review documents related to the hearing. In a second category, the inmate has a recent disciplinary (CDC 115) and believes that the disciplinary will have a negative impact upon the hearing.

Remedies for panel postponements include a combination of data programs, improved communication among stakeholders, and timely dissemination of information (psychological evaluations in particular). Assuring a complete document package for suitability hearings will reduce the number of delays. As to inmate requests for postponements, BPH must honor due process considerations and not infringe upon the inmate’s right to prepare for the hearing. Denying inmate requests when good cause for postponement exists will deny due process.



### **Psychological Evaluations**

*The packet of materials available to the hearing panel traditionally includes a psychological evaluation of the inmate. The timeliness and quality of the evaluation has been criticized in the past by all parties. The lack of clear BPH policy regarding the appropriate interval between evaluations has been discussed regularly by the Rules Committee during BPH appointees' confirmation hearings. The absence of a "current" psychological evaluation is often the reason for a hearing postponement. BPH now employs its own psychologists to better manage the evaluations.*

- 16. *What is your understanding of how recent or how old an inmate's psychological evaluation can be for it to be a relevant and useful tool in the lifer hearing process? What is the BPH policy regarding this issue? What written materials have been distributed to you about this matter?***

Based upon training conducted by BPH in September and December 2007, clinical evaluations written before March 2007, will have forensic viability for three years. After three years, an addendum or new evaluation should be performed.

In current practice, BPH has contracted with licensed psychologists to conduct examinations in which diagnostic protocols are implemented. Such reports will be viable for five (5) years. In cases in which the inmate has mental health issues or has decompensated, addendums to existing evaluations or new evaluations should be performed in anticipation of impending suitability hearings.

- 17. *How have you been trained regarding the role a psychological evaluation should play in your decision regarding parole suitability? How do you incorporate this tool?***

Psychological evaluations are tools that may be considered with the enumerated factors within sections 2281 and 2402 of Title 15 in the evaluation of suitability for parole. There are not formulaic criteria for determining suitability and therefore, there are no pre-determined values placed upon psychological evaluations. The reliance upon the evaluations of psychologists is on a case-by-case basis. For instance, if the inmate suffered from mental disease before the commission of the life crime, psychological evaluations are insightful as to the current mental status and the various protocols that the inmate has participated in the rehabilitation process.

- 18. *What do you do when you receive a file and do not think the psychological evaluation is sufficiently up to date?***

Based upon the inmate's personal right to proceed with the suitability hearing I prepare all cases upon the assumption that the case will proceed to hearing. In situations in which the previous psychological evaluations eliminate the existence of mental disorder

either historically or currently and the evaluations are supportive of parole, there is a likelihood that the case will proceed as scheduled. If the evaluation is in excess of five (5) years old, the issue of the viability of the psychological reports is discussed with the inmate and the attorney. A primary consideration for the panel is the fundamental fairness of proceeding (due process) with the hearing. If the inmate wishes to proceed, a due process consideration must be determined by the panel.

**19. *Have you seen improvement in the quality of the psychological evaluations provided to you for lifer hearings now that psychologists are being employed directly by BPH? What specific instruction have you been provided about any new procedures established by the BPH's own psychologists?***

In the past, the clinical evaluations that were summary in nature were a disservice to the inmate as the findings and conclusions were not based upon the administration of diagnostic protocols. By its very nature, the protocol of clinical evaluations lack consistency as the psychologist relies upon subjective assessments. By contrast, the contract psychologists administer the same diagnostic protocols and therefore, there is an enhanced consistency in evaluation process for all inmates. Information concerning the contract psychological examination process has been obtained during public sessions conducted by BPH in September and December 2007.

**20. *Board procedures provide that the psychological evaluation be in the inmate's file, available to both the defense counsel and the district attorney, at least 10 days prior to a parole suitability hearing. Failure to provide the document within that window is grounds for postponement. What is your estimate of the number of hearings you are forced to postpone because the evaluation is not in the packet of materials provided to you? When is it appropriate to grant a postponement because the psychological evaluation is not current?***

On a weekly average, approximately 20-30 percent of the scheduled cases are infected by psychological evaluations that were not delivered to the inmate and/or the inmate's attorney before the hearing. Within that 20-30 percent are situations in which the inmate requires an interpreter and the interpreter was not provided or the notice of the need for an interpreter was not communicated to the psychologist.

There are several scenarios in which a suitability hearing should be postponed when the psychological report is not current. For example, an initial suitability hearing should have a current evaluation as the initial hearing (if the inmate is denied a parole date) forms the foundation for all future hearings. In another situation, if the inmate has been incarcerated for many years and has programmed, it is unfair for that inmate to appear before the Board with a psychological evaluation that is five years old. Furthermore, inmates with mental disorders should have an updated psychological evaluation before their suitability hearings.



### **Multiple Year Denials**

*Some inmate attorneys complain that their clients are denied parole suitability for two or more years without adequate or proper justification. They say multi-year denials are made even though the inmate has been a model prisoner and programmed excellently since the last hearing when he/she received only a one-year denial.*

**21. *What criteria do you use for issuing a one-year denial vs. a multi-year denial? How were you trained regarding this issue? Are there written criteria that proscribe what the length of a denial should be? Please explain.***

Assuming that an inmate has been found unsuitable for parole, the decision as to the length of denial involves the consideration of several factors relative to that case. On the one hand, if the inmate has previously been advised of programming deficiencies and has not participated in programming, an assessment must be made concerning a realistic time period to start/complete the necessary programming. For instance, if the inmate had a prior criminal record for serious crime and drug abuse and has not participated in substance abuse programs, a multi-year denial provides a realistic time frame in which to gauge the inmate's progress.

On the other hand, if the same inmate has upgraded vocationally and has participated in drug abuse in the past, a review of previous denials may support a minimum period of denial in recognition of the inmate's efforts. A one-year denial would advise the inmate that the Board appreciates the inmate's efforts and provides positive reinforcement to continue programming.

There are no written rules for the selection of the period of denial. Commissioners are encouraged to exercise their independent judgment and to remain fair and objective in all cases.

**22. *How do you determine that an inmate cannot receive the programming that he or she needs and therefore that a multi-year denial is appropriate?***

It would be punitive and unfair to impose a multi-year denial in a situation in which an inmate did not have program opportunities and therefore has not programmed. In most institutions, inmates have a variety of programming opportunities. There are several methods of determining the available programs such as discussions with staff, inmates, and a review of central files for similarly situated inmates at the same institution. Concerning inmates who do not have programs for their specific needs, there are functional equivalents that may be considered such as individual study through books (prison library), correspondence courses, and schools—community college, for instance. For the motivated inmate, there are venues for rehabilitation and methods of demonstrating the development of positive values.

### **Board Policies**

*The BPH is governed by Title 15 of the California Code of Regulations, yet changes occur in law and/or court decisions that affect the board's proceedings.*

**23. *How are you notified when there is a change in law or a court decision? Are there aspects of Title 15 that you have found outdated or even contradictory to current board practices? If so, please describe and explain how you know what the appropriate process is. What else, besides Title 15, do you rely upon for guidance with roles, responsibilities, and board policies?***

In addition to the BPH training (December of each year), changes in law are communicated through documents in the Legal document section of the inmate's Board report, memos, legal memorandums that are included in the report, and during the monthly en banc meetings.

In preparation to fulfill the expectations of my assignment, I have read a legal practice book produced by the Continuing Education of the Bar. The Board provides several practice manuals for Commissioners. I have benefited from discussing the institutional knowledge of experienced Deputy Commissioners. These conversations have been an invaluable resource for reference as to the conduct of hearings. I consider myself fortunate to have been assigned to work with many dedicated Deputy Commissioners who have imparted their collective wisdom and knowledge.

### **Self-Help, Vocational and Education Programs**

*The extent to which an inmate has participated in self-help, education and/or vocational programs is regularly a subject of discussion at an inmate's parole suitability hearings and additional programs are typically recommended when an inmate is denied parole. However, the availability of these programs varies widely across the state's prisons.*

**24. *To what extent are you informed about the availability of self-help groups and educational or vocational programs at the institution where the inmate is incarcerated? Please explain how often and by whom you are informed of this information.***

Upon my arrival at an institution, I attempt to gather information concerning programming opportunities. At some institutions, the institution's board desk personnel provide a written list of programs. At other institutions, program information can be obtained from correctional staff assigned to the BPH room, discussions with inmates and a comparison of inmate files for that week. For the most part, inmates at Level II and III facilities have a variety of program opportunities. The programs at Level IV institutions are limited by comparison.

- 25. *If a prisoner requires additional programming before becoming suitable for parole, how is this information conveyed to the institution? When or how would you find out if the recommended programming is not available? In cases such as this, when the recommended program is not available at that institution, what alternatives do you recommend, if any?***

Based upon respect for the inmate, all programming recommendations and methods to achieve those objectives are discussed with the inmate at the conclusion of the hearing. If group therapy such as AA and NA are not available, self-help, self-study or functional alternatives are discussed in detail. In essence, the development of life skills, coping skills, and positive decision-making are elaborated for the inmate. As part of my sense of responsibility, I attempt to draw a road map of rehabilitation with the inmate. The inmate is encouraged to discuss program limitations to stimulate the discussion of alternatives. In the final phase of discussions, recommendations are made to the inmate to discuss program issues with the inmate's correctional counselor and members of the inmate's support network. In some instances, the inmate is advised to discuss programming matters with the classification committee that meets with the inmate after each suitability hearing.





Senate Confirmation Hearing  
Michael F. Prizmich, Commissioner  
Board of Parole Hearings  
Response to Senate Rules Committee Questions  
December 19, 2007

**Statement of Goals**

- 1. *What are your goals and objectives as a member of the Board of Parole Hearings (BPH)? What do you hope to accomplish during your tenure? How will you measure your success?***

My goal is to provide complete, comprehensive, and fair hearings for inmates in their parole consideration hearings. Provide decisions that are understandable and direction and insight to the inmate as to my evaluation of their parole suitability.

I would truly feel that I have achieved something if the inmate receives my suggestions and moves forward with them to positively affect their lives.

My success should be measured by me through the commentary and interaction of those attorneys and staff that have experienced my work and provided feed back to me.

- 2. *Do you believe that an inmate convicted with an indeterminate life sentence can be successfully rehabilitated and then safely return to society? Please explain how you come to this conclusion and what you use to assist you with this analysis.***

Certainly a life inmate can be rehabilitated and successfully returned to society. I base my conclusion on my many years of interacting with people who have served time and come through their life challenges successfully and live productive lives. I have known and watched people begin the process of self help who have elevated themselves from sometimes dreadful lives to productive, happy ones. The measure of this success isn't in someone who considers success a problem-free existence, but rather someone who understands the challenges of everyday life and meets those challenges as an integral part of what life is. There is no magic formula for arriving at the conclusion that an offender has reached a point in the rehabilitation process that warrants a return to society. We have factors that we always consider, but each person's story is different and each person's response to rehabilitative process is different. If it were as easy as weighing factors, computers could make these decisions. We must evaluate each person based on their personal history and their response to the rehabilitative process. That is my approach and I truly believe I am able to evaluate each person fairly.

**Senate Rules Committee**

DEC 18 2007

J. Michael Prizmich

### **Training**

- 3. Please describe any training or other assistance you received to prepare you for your responsibilities as a board member including the approximate number of hours it took. Who provided your training?**

Most certainly I received a number of weeks of formal training provided by Board of Parole Hearings (BPH). Additionally, I was fortunate to have several opportunities to observe actual hearings. We do also receive ongoing training. I have received considerable insight and training from my colleagues who are gracious enough to help whenever I've asked. I have also learned a great deal in my work from the inmates' attorneys, the District Attorneys, and from the inmates themselves.

As far as the training I believe my formal training was six weeks and the informal training is ongoing. Provider of said training is BPH staff, co-workers, attorneys, institution staff, and inmates.

- 4. What recommendations could you offer to improve the training of new board members? What ongoing training do you think should be provided to all board members?**

The recommendations I have made to improve training include a transition approach to new commissioner training. Once the formal training period is complete, a new commissioner should, in my opinion, be placed with a seasoned and respected commissioner for three to four weeks to actually experience the hearings. At first, the new commissioner would only watch but after the second or third day they should begin transitioning into role of commissioner until for the last several weeks they handle all aspects of the hearing with oversight.

In my view, training should occur each and every month at the Board of Parole Hearings. We should also incorporate more interaction with our Legal staff. As new law or court decisions become available, the information should be presented during training sessions with clear explanations of the implications on the Life Hearing process.

- 5. Does anyone from the BPH sit in on your hearings to provide you with feedback and assistance? If so, who and how often? Particularly in the early months of your service, did anyone review your hearings or transcripts to help you improve your skills?**

I have had one person from BPH sit in my hearing, and I did not receive any feedback. A far greater number of individuals have sat in my hearings, but generally those individuals are attending for another agency [such as the Attorney General or Americans with Disabilities Act (ADA) Compliance] and I haven't experienced them

providing much in the way of feedback. This is more likely a product of the heavy workload we are laboring under, but in my case I really do appreciate the input.

As far as reviewing transcripts, I have taken my transcripts to other commissioners that I respect and asked them to look them over for me. I did not have the aide of BPH staff assistance in this matter. Again, I attribute this to the workload.

**6. *What should the Legislature expect from board members regarding a consistent format for lifer hearings? Should all of the board members and deputy commissioners weigh the various factors in a consistent manner? For example, what do you believe should be the appropriate emphasis on the facts of the crime?***

The legislature should expect that each commissioner cover each hearing in a thorough and complete manner. There is no excuse that an area of importance would not be covered during the hearing. We have formats to follow and while each commissioner may have different preference as to the order or manner in which the various factors are addressed, the content for the hearings should cover the same elements. The California Code of Regulations, Sections 2281 and 2402, provides guidelines as to what factors should be considered. The Legislature should expect that each of these factors is fully considered.

As far as weighing factors, we are provided guidance regarding factors for suitability and those factors should be weighed and considered consistently for each hearing. The example you provided above regarding the crime itself is a good example. Most certainly one needs to consider the crime, but one also needs to understand the crime is unchanging. Consideration should be given to a number of factors, such as the inmate's insight, remorse and acceptance of responsibility, the inmate's criminal history, the psychological evaluation, how the inmate has programmed while in prison and whether the inmate has had disciplinary issues in order to assist us in appraising the person we see before us.

**7. *How were you trained to factor in decisions made by previous panels in denying or granting suitability?***

Each hearing is a new hearing, guided by Title 15; and each panel decides for themselves the suitability of an inmate based on what the panel hears during the hearing and on the record presented. While consideration is given to other panels' decisions, each panel is charged with and has the responsibility to conduct their own hearing and render decisions based on their evaluation.



**8. *How should the Legislature evaluate the effectiveness of the BPH? What should we look for when we observe hearings or review transcripts?***

In regard to training, the Legislature should expect that the Board will thoroughly prepare each Commissioner appointed by the Governor and that all Board staff are trained and prepared to comply with the letter and spirit of the law. It should also be expected that the Board will continually evaluate all training and ensure that it is current and effective. Furthermore, I believe the Board has an obligation to ensure that there are sufficient resources to provide adequate training to ensure the mission is accomplished and to inform the appropriate authority if the resources to meet training needs are inadequate.

As to the content of transcripts, I believe the Legislature should look to determine the thoroughness of each hearing; was the hearing conducted fairly to all stakeholders; was the hearing timely; was the hearing conducted using the proper questions and discussions; and was there a fair and reasoned decision reached at the conclusion of the hearing? The transcripts prepared for the hearings should illustrate these items.

**9. *Which educational, vocational or self-help programs in state prisons have you observed and when? How do you know if a particular program is effective? Please explain.***

Due to the heavy workload of the schedule we are under and the time constraints for the lifer hearings, I have not observed programs in the state prisons. However, I am familiar with many programs in both a jail setting and in the community I live. I was a very active community minded Sheriff and ran programs in the jail for inmates and for the community. I have worked very closely with domestic violence victims, drug abusers, and social services to understand and develop programs to assist people. Therefore the programs offered in prison are familiar to me. The difficult part is having an understanding of what is available at an institution as internal factors sometimes change from month to month. The method I use to determine what is available is to talk to staff and the inmate during the hearings. My sense is that I get a fairly good idea utilizing that method.

**Hearing Preparation**

*Members of the BPH receive a condensed version of the inmate's file prior to the hearing. There is still confusion about exactly when the information is sent and whether or not it is complete. Because the Department of Corrections and Rehabilitation does not have the technology to transmit files electronically, all information is sent via hard copy.*



**10. Please describe when and how you prepare for each hearing. Precisely when are files made available to you for future hearings?**

I receive my packets about one week ahead of my scheduled hearings. I usually spend Saturday morning between five and six hours reviewing the packets. I then prepare a list of areas of concern I have. If I am able, I will call the institution on my drive down on Monday to attempt to get clarification to my concerns. This isn't always successful, but it does provide me with a grasp of what difficulties I might be facing.

**11. How often do you estimate that the file you receive in advance of the hearing lacks key important documents such as a current psychological evaluation?**

I found that very often key information is missing and lately it seems that situation is more common. For example, this week I received my packets and found that nine of the sixteen cases I have are deficient in some manner. This does not mean that these nine cases will not be heard, but I will only be able to determine that once I get to the facility and whether the information that is lacking is available to me then.

**12. Do you have any suggestions for improving the dissemination of information prior to the hearing?**

Yes, one suggestion would be to assign someone from HQ or a staff at each facility to review the files prior to the hearings in sufficient time to either correct the problem or cancel the hearing. Verifying that all packets are complete should occur before they get to us. We should be getting complete packets, our review is at the end of the process so we should not be the ones attempting to determine at the last minute if a hearing has all the documents.

**En Banc Hearings**

*En Banc hearings occur each month when the full board meets in Sacramento. These hearings typically include consideration of split decisions where the two-person panel composed of a BPH member and the deputy commissioner disagree on a decision. The full board makes the final decision in these cases.*

**13. How do you prepare for the en banc hearings?**

I receive a CD disk with all the information regarding the en banc cases that I review the weekend before the en banc hearing. I also have access to the full hard copy records on Monday and Tuesday before the hearing at HQ.

**14. *How is a sometimes lengthy hearing conducted at a prison by just one BPH commissioner and one deputy commissioner summarized for all of the other BPH members in Sacramento? Is the material you receive sufficient to allow you to make an informed decision?***

It is my responsibility to review the case and I not only review the case but have the opportunity to question the commissioner who handled the case. So, yes, I do feel I am adequately informed.

**Postponements**

*Based on information received from the BPH, over 23% of the hearings that you were scheduled to conduct from the time you were appointed in March 2007 through September 2007 were postponed.*

**15. *Please explain why a significant number of your hearings have been postponed. What strategies would you recommend to reduce this number?***

The vast majority of my postponements are as a result of psychological evaluations not completed and/or provided timely to the inmate and their attorney. Almost always the request for postponement comes from the inmate and their attorney. This becomes an issue of fairness particularly in light of the fact the inmate raises the issue. I always discuss the matter with the inmate and his attorney before making a decision. There are some postponements as a result of previous panels requesting a new psychological evaluation that was not completed, and in those cases, I review the record, (the previous panel's transcript and forms associated with the transcript) to find out the reason for the request of a new evaluation. Then there are a smaller number of postponements that come as a result of direction from Headquarters.

I've already mentioned my solution earlier but certainly it's worth repeating, someone should be evaluating these packets before they get to us and correct this. Postponements with me are done with concern for the fairness to the inmate and are always done after dialog with the inmate and their attorney.

**Psychological Evaluations**

*The packet of materials available to the hearing panel traditionally includes a psychological evaluation of the inmate. The timeliness and quality of the evaluation has been criticized in the past by all parties. The lack of clear BPH policy regarding the appropriate interval between evaluations has been discussed regularly by the Rules Committee during BPH appointees' confirmation hearings. The absence of a "current"*

*psychological evaluation is often the reason for a hearing postponement. BPH now employs its own psychologists to better manage the evaluations.*

**16. *What is your understanding of how recent or how old an inmate's psychological evaluation can be for it to be a relevant and useful tool in the lifer hearing process? What is the BPH policy regarding this issue? What written materials have been distributed to you about this matter?***

My understanding is that the static portion of the psychological evaluation is "good" for up to 5 years. The dynamic factors of the evaluation are to, in the future, be reviewed prior to every hearing. Until that can be accomplished and each inmate has the new format applied, the interim process is that the two senior psychologists review the inmate's present evaluation to determine if it is adequate for the upcoming hearing. The new format will also include a risk assessment tool that will allow a more objective determination of risk should the inmate be released. The Commissioners did receive materials during training and we have had written updates and verbal reports on the evaluation process and its uses.

**17. *How have you been trained regarding the role a psychological evaluation should play in your decision regarding parole suitability? How do you incorporate this tool?***

Yes, during our initial training, and at several subsequent training sessions, we have been provided specific training and received considerable material that details and outlines the role of the psychological evaluations. Certainly learning about the evaluation process then applying the learned process into practice becomes a viable tool for us. Psychological evaluations represent one component of the entire evaluation process. All of the factors are considered and depending on the response of the inmate, that specific component may or may not be weighted heavier than other factors. Each hearing varies, based on the factors involved. For inmates with drug and/or alcohol related issues, I will ask a lot of questions regarding AA/NA or other self help programming the inmate has completed, and that may cause the psychological evaluation to have less weight.

**18. *What do you do when you receive a file and do not think the psychological evaluation is sufficiently up to date?***

Files with old evaluations will cause me to make a note as I review the files. As I stated above, each hearing varies, based on the factors of the hearing. There are other factors to consider, including the nature of the crime, recent disciplinary issues, parole plans, programs, etc. and it may not be something I can evaluate until I speak to the inmate and his attorney at the hearing. In some cases, I contact the institution regarding possible late mailing of documents, and I may contact the inmate's attorney early to discuss the matter.



In all cases, I look at the totality of the record and consider the potential weight of the psychological evaluation against other factors including, but not limited to, parole plans recent disciplines and the nature of the crime. It may be unfair to postpone solely on the basis of a psychological evaluation without considering the other factors because it is only one factor among many important factors.

**19. *Have you seen improvement in the quality of the psychological evaluations provided to you for lifer hearings now that psychologists are being employed directly by BPH? What specific instruction have you been provided about any new procedures established by the BPH's own psychologists?***

I have seen an improvement in the quality of evaluations. I don't know if that is as a result of the point of hire or if the format was changed. In my view, the evaluations are clearly more comprehensive for our purposes. We did receive a comprehensive written review of the new process.

**20. *Board procedures provide that the psychological evaluation be in the inmate's file, available to both the defense counsel and the district attorney, at least 10 days prior to a parole suitability hearing. Failure to provide the document within that window is grounds for postponement. What is your estimate of the number of hearings you are forced to postpone because the evaluation is not in the packet of materials provided to you? When is it appropriate to grant a postponement because the psychological evaluation is not current?***

Failure to provide timely information to the inmate and their attorney accounts for the vast majority of hearings failing to move forward, and as a result, are postponed. If I were to give a percentage of cases that could be postponed, I would say it would be approximately in the upper "teens" - perhaps as much as 18 percent.

If the inmate and their attorney raise the issue of the psychological evaluation not being current, one must consider this. There would be times when a grant of postponement is necessary and appropriate in fairness to the inmate.

### **Multiple Year Denials**

*Some inmate attorneys complain that their clients are denied parole suitability for two or more years without adequate or proper justification. They say multi-year denials are made even though the inmate has been a model prisoner and programmed excellently since the last hearing when he/she received only a one-year denial.*



**21. What criteria do you use for issuing a one-year denial vs. a multi-year denial? How were you trained regarding this issue? Are there written criteria that proscribe what the length of a denial should be? Please explain.**

In my view, a one year denial should be considered when relatively few items need clarification for the inmate to be considered suitable. That time frame, in my view, should be utilized to complete those tasks. Each panel makes their own assessment as to the amount of time needed to achieve direction given to the inmate. Again, my view is that a one year denial be used for a limited number of needed items or for a single item that might take a bit longer to achieve completion.

**22. How do you determine that an inmate cannot receive the programming that he or she needs and therefore that a multi-year denial is appropriate?**

In my view, programming is best achieved with other people interacting but sometimes for various reasons either the programs aren't available or the programs are not suitable for the inmate's needs, so a different approach is needed. I often suggest that the inmate complete personal study and book reports as an alternative. I also find that self help in the early stages typically takes a long period of time to be successful. We deal with humans with many different human needs and abilities, and I use my judgment based upon my past experience to help me in my decisions.

In terms of written criteria I can't say there is much on that matter it is so difficult to outline all the various options.

### **Board Policies**

*The BPH is governed by Title 15 of the California Code of Regulations, yet changes occur in law and/or court decisions that affect the board's proceedings.*

**23. How are you notified when there is a change in law or a court decision? Are there aspects of Title 15 that you have found outdated or even contradictory to current board practices? If so, please describe and explain how you know what the appropriate process is. What else, besides Title 15, do you rely upon for guidance with roles, responsibilities, and board policies?**

We receive information via e-mail as well as hard copy documents being sent to us. We have access to Legal through our Blackberry. We also have monthly Board meetings and, if needed, updates are provided at that time. With regard to Title 15, yes there is case law that cause issue with the Title 15 standards. We do rely on Legal to assist us and they've often provided guidance in written form. Besides Title 15, most certainly, case law in our field is an important reference, the Penal Code and Health and Safety Code, as well as policies and procedures for CDCR are guides we reference.

### **Self-Help, Vocational and Education Programs**

*The extent to which an inmate has participated in self-help, education and/or vocational programs is regularly a subject of discussion at an inmate's parole suitability hearings and additional programs are typically recommended when an inmate is denied parole. However, the availability of these programs varies widely across the state's prisons.*

- 24. *To what extent are you informed about the availability of self-help groups and educational or vocational programs at the institution where the inmate is incarcerated? Please explain how often and by whom you are informed of this information.***

Self help groups are provided to us in written form by the institutions, but as I stated above that can change often. One can look this information up on-line but the best method is to consult with staff on a regular basis. I have asked for this updated information to be provided by each institution's lifer desk as a part of their duties and to make that information available to the commissioners.

- 25. *If a prisoner requires additional programming before becoming suitable for parole, how is this information conveyed to the institution? When or how would you find out if the recommended programming is not available? In cases such as this, when the recommended program is not available at that institution, what alternatives do you recommend, if any?***

I make a habit of really marking up my decision sheets. I include as much information as I can in as large a print as I can to highlight and bring attention to my directions. If there is any question in my mind regarding what programming is available, I will check with the facility or staff regarding what programming is available to determine if my recommendations are achievable and appropriate. If the programming is vital and is available at another institution I will request consideration be given to transfer the inmate to another institution. Naturally, transfer responsibility is left with the facility but I make it known what I feel is best. Additionally, as I previously stated, if the vocation or program isn't available, I will attempt to suggest an alternative for the inmate.



**579-R**

Additional copies of this publication may be purchased for \$9.50 per copy (includes shipping and handling) **plus current California sales tax.**

**Senate Publications & Flags**

1020 N Street, Room B-53  
Sacramento, CA 95814  
(916) 651-1538

Make checks or money orders payable to **SENATE RULES COMMITTEE.**  
**Credit cards not accepted.**

Please include stock number 579-R when ordering.









